

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

Criminal Action
No. 17-cr-10305-ADB

v.

June 7, 2019

JOSEPH BAPTISTE and
ROGER RICHARD BONCY,

Pages 1 to 145

Defendants.

TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE THE HONORABLE ALLISON D. BURROUGHS
UNITED STATES DISTRICT COURT
JOHN J. MOAKLEY U.S. COURTHOUSE
ONE COURTHOUSE WAY
BOSTON, MASSACHUSETTS 02210

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P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Allison D. Burroughs, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, One Courthouse Way, Boston, Massachusetts, on June 7, 2019.

The defendant, Roger Richard Boncy, is present with counsel. The Assistant U.S. Attorneys are present.)

P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Allison D. Burroughs, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, One Courthouse Way, Boston, Massachusetts, on June 7, 2019.

The defendant, Roger Richard Boncy, is present with counsel. The Assistant U.S. Attorneys are present.)

THE COURT: I'm calling the case. U.S. versus Baptiste is called.

MR. DWYER: Your Honor, Mr. Dwyer on behalf of Mr. Boncy who is present here in court.

THE COURT: And where is co-counsel and his client?

MR. DWYER: Your Honor, I had a telephone conversation with him last night. He indicated he was traveling to Boston today and would be present at the hearing. Other than that, I have nothing to report to the Court.

THE COURT: We can't start until he gets here. Now we have time to get you water.

MR. BASIL: Thank you, Your Honor. I appreciate the Court's accommodation. For the record, Kriss Basil and Elina Rubin-Smith for the Department of Justice on behalf of the United States. With us at counsel table is case agent

1 Garett Trombly who we also expect as the case agent to be
2 with us at counsel table during trial.

3 THE COURT: Yes, that's fine.

4 MS. RUBIN-SMITH: Good afternoon, Your Honor.

5 MR. BASIL: For the record, Your Honor, although we
6 have reached out to Mr. LaRoche, we have heard exactly
7 nothing from him.

8 THE COURT: Your motion. He joined in it?

9 MR. BASIL: Your Honor, he joined on the record at
10 the last hearing and you allowed it.

11 MR. DWYER: Okay.

12 THE COURT: Mr. LaRoche is here. Call your
13 witness, please.

14 MR. DWYER: Mr. Boncy calls Special Agent Peter
15 "Anderson".

16 THE CLERK: Will you please raise your right hand.

17 (SPECIAL AGENT PETER ANDERSON duly sworn by the
18 Deputy Clerk.)

19 DIRECT EXAMINATION

20 BY MR. DWYER:

21 **Q.** Good afternoon, Mr. Anderson.

22 **A.** Good afternoon.

23 **Q.** That's a fake name, right?

24 **A.** Yes, it is.

25 **Q.** Your real first name is Peter, right?

1 **A.** That's correct.

2 **Q.** That's not a fake name?

3 **A.** It is.

4 **Q.** Are you okay with me calling you Special Agent Peter?

5 **A.** That's fine. Thank you.

6 **Q.** We have limited time today. So I'm going to move
7 quickly, and I apologize for that in advance. Okay?

8 **A.** Yes, sir.

9 **Q.** You're an FBI agent?

10 **A.** Yes, I am.

11 **Q.** How long have you been one?

12 **A.** A little over 11 years.

13 **Q.** Where are you currently stationed?

14 **A.** On the west coast.

15 **Q.** And you are an undercover; is that correct?

16 **A.** As one of my job duties, yes.

17 **Q.** One of your job duties. How long have you been an
18 undercover?

19 **A.** Since 2012.

20 **Q.** Do you do that on a fulltime basis, undercover work?

21 **A.** No, I don't.

22 **Q.** So you work cases as well?

23 **A.** That's correct.

24 **Q.** You're both a case agent and undercover for the FBI?

25 **A.** That's true.

1 Q. Did you get training as an undercover with the FBI?

2 A. I went through a selection course.

3 Q. Okay. And other than the selection course, did you get
4 any training from the FBI on how to be an undercover, how to
5 run an undercover, that sort of thing?

6 A. Some, yes.

7 Q. Okay. And tell us generally how long that training was.

8 A. I would say, without being too specific, for a period of
9 weeks there have been trainings.

10 Q. Periodic trainings?

11 A. Yes.

12 Q. Let me jump back to 2015.

13 A. Yes, sir.

14 Q. At some point in time were you assigned to an
15 investigation that was based here in Boston?

16 A. Yes, sir.

17 Q. And were you assigned in your undercover capacity?

18 A. Yes, I was.

19 Q. Did you use the name Peter Anderson in that case?

20 A. Yes, I did.

21 Q. Approximately when were you assigned to the investigation
22 in Boston?

23 A. In the fall of 2015 approximately.

24 Q. Up until the fall of 2015, have you acted in any
25 undercover capacity in connection with that investigation?

1 **A.** No.

2 **Q.** The target of that investigation at that time was Joseph
3 Baptiste; is that correct?

4 **A.** That's my understanding.

5 **Q.** Okay. When you got assigned, who was the case agent?

6 **A.** Special Agent Vince Chambers.

7 **Q.** Did you have an initial briefing with Mr. Chambers?

8 **A.** Yes, I did.

9 **Q.** Who was present at that initial briefing?

10 **A.** I can't recall every person who was present for the
11 briefing. But Special Agent Chambers was there. I was
12 there. Other FBI employees were there.

13 **Q.** Okay. Now, switching gears a little bit here. As an
14 undercover, your job essentially is to aid the FBI in
15 gathering evidence, correct?

16 **A.** That is correct.

17 **Q.** And as an undercover you pose as a fictitious person,
18 correct?

19 **A.** That's correct.

20 **Q.** All right. And when it comes to undercover activities,
21 one of the main pieces of evidence that you collect is
22 recordings, correct?

23 **A.** That is one of the pieces of evidence I collect, yes.

24 **Q.** Sometimes it's audio recordings, correct?

25 **A.** That's correct.

1 Q. Sometimes it's video recordings, correct?

2 A. Correct.

3 Q. And sometimes you use both video and audio recordings,
4 correct?

5 A. Correct.

6 Q. And sometimes when you conduct meetings you have multiple
7 recording devices involved, correct?

8 A. Correct.

9 Q. And part of the reason is that recording devices fail,
10 correct?

11 A. That is true.

12 Q. And the other part of the reason is that sometimes a
13 recording device won't pick up certain parts of the
14 conversation, correct?

15 A. That's true.

16 Q. And, for example, in the investigation of Mr. Baptiste
17 you had a meeting here in Boston on November 12, 2015,
18 correct?

19 A. Correct.

20 Q. And you were involved in that meeting, correct?

21 A. Yes.

22 Q. And Mr. Boncy was involved in that meeting, correct?

23 A. Yes.

24 Q. And Mr. Sales was there?

25 A. Yes.

1 Q. And there were multiple recording devices used at that
2 meeting, correct?

3 A. Yes.

4 Q. The other part is you work a lot of undercover cases
5 while this is going on, correct?

6 A. I can at times work multiple cases at the same time.

7 Q. And in 2015, three, four years ago, how many cases were
8 you working at the time?

9 A. That was the only undercover case I was working.

10 Q. That was the only undercover case you were working at the
11 time?

12 A. That's correct.

13 Q. Okay. And one of the reasons you do recordings is to
14 preserve evidence, correct?

15 A. Yes, sir.

16 Q. Because you don't write generally reports about your
17 interactions with the targets of an investigation, correct?

18 A. It depends on the circumstances. But if there are
19 recordings, generally I do not.

20 Q. Right. Because from your perspective and from the FBI's
21 perspective, the best evidence is the recording, correct?

22 A. Yes.

23 Q. You rely on the recording itself, correct?

24 A. I do.

25 Q. Isn't it common practice at the FBI that you don't write

1 reports because you have the recording, correct?

2 **A.** I would say that is some people's practice, yes.

3 **Q.** Is that yours?

4 **A.** Most often, yes.

5 **Q.** Okay. And it was your practice in this case, correct?

6 **A.** It was.

7 **Q.** You only wrote one 302 about a meeting, correct?

8 **A.** I believe that's accurate.

9 **Q.** So the recording device and the recording itself is
10 intended to preserve evidence of the interactions with the
11 targets of the investigation, correct?

12 **A.** Yes, sir.

13 **Q.** And before you have those recordings you actually plan
14 the interaction with the target of the investigation,
15 correct?

16 **A.** At a general level, yes.

17 **Q.** And you do that planning with a case agent, correct?

18 **A.** That's correct.

19 **Q.** And the general level is certain things that you're
20 looking to say, you want to hear what they'll say in relation
21 to what you say, correct?

22 **A.** That's fair.

23 **Q.** You will talk through, for lack of a better word, goals
24 and objectives of the recording. Is that true?

25 **A.** That's true.

1 Q. You will do that with the case agent, correct?

2 A. Yes.

3 Q. After the recording you will walk through whether or not
4 you achieve those goals or failed to achieve those goals?

5 A. Yes. We will debrief after the meeting.

6 Q. That debriefing, is it done orally?

7 A. Yes.

8 Q. Is it ever done in writing?

9 A. Not often.

10 Q. Okay. Who's directing the undercover?

11 A. When you say directing the undercover, can you be more
12 specific.

13 Q. Can you go out and make a recording on your own?

14 A. I would not do that, no.

15 Q. Who would tell you to make a recording?

16 A. The case agent.

17 Q. Who would tell you what to say in the recording?

18 A. Nobody would tell me specifically what to say in a
19 recording.

20 Q. Okay. But they would give you goals of what to say?

21 A. Yeah. I would say overall guidance.

22 Q. And who is that?

23 A. Specifically?

24 Q. Yes.

25 A. At times it was Special Agent Chambers.

1 Q. And was it ever Mr. Trombly?

2 A. Yes. At times it was Special Agent Trombly.

3 Q. They were the case agents in the Baptiste matter,
4 correct?

5 A. That's correct.

6 Q. Now, the Baptiste investigation, we talked about it a
7 little bit earlier. You were assigned in and around the fall
8 of 2015; is that correct?

9 A. That is correct.

10 Q. In connection with that investigation, you're posing as
11 an individual from SEW Funds, correct?

12 A. Yes.

13 Q. You worked with another undercover in that investigation,
14 correct?

15 A. Yes, I did.

16 Q. And that undercover went by the name Nello, correct?

17 A. That's correct.

18 Q. SEW Funds was posing as a potential investment fund,
19 correct?

20 A. That's true.

21 Q. Entirely fabricated though?

22 A. Correct.

23 Q. SEW Funds was posing as a fund that wanted to invest in
24 Haiti, correct?

25 A. Yes.

1 Q. Specifically they wanted to invest in a "cement project",
2 right?

3 A. Yes.

4 Q. That cement project was brought to Nello, the other
5 undercover in the matter, by Mr. Baptiste, correct?

6 A. I don't know specifically the origin of how that project
7 was brought to the attention of the FBI.

8 Q. You were not briefed on how that project came in?

9 A. Not all the details, no.

10 Q. In connection with that investigation, there was a
11 meeting in Boston in or around November 12, 2015, correct?

12 A. Yes.

13 Q. During the course of that meeting there were discussions
14 about the cement project, correct?

15 A. Yes.

16 Q. And after that meeting, some time in later November, you
17 received an email from Mr. Boncy, correct?

18 A. So I never individually received an email myself. The
19 emails were maintained by the case agent.

20 Q. Okay. So the emails that would be addressed to you would
21 be not received by you?

22 A. Correct.

23 Q. Who would receive them?

24 A. The case agent.

25 Q. Would you review them?

1 **A.** No. I would be made aware of them.

2 **Q.** You would be made aware of them. How would you be made
3 aware of them?

4 **A.** Verbally.

5 **Q.** Would they ever be forwarded to you?

6 **A.** I don't ever remember having them forwarded to me.

7 **Q.** Okay. Do you recognize this email?

8 **A.** Can you give me a moment?

9 **Q.** Yep.

10 **A.** This is familiar to me, yes.

11 **Q.** You recollect it?

12 **A.** Yes.

13 **Q.** Okay. This is an email that was sent to you by Mr. Boncy
14 on November 20, 2015; is that correct?

15 **A.** That's what it says, yes.

16 **Q.** Okay.

17 MR. DWYER: Your Honor, at this time I'd offer
18 Defendant's 1 for today's hearing only.

19 THE COURT: Any objection from the government on
20 the email?

21 MR. BASIL: Yes, Your Honor. First, this is a
22 direct examination, not a cross, but we have cross
23 examination going on. We are also well beyond the scope of
24 what the Court ordered today.

25 THE COURT: That's what I was going to circle back

1 to. It's a witness that is affiliated with the government.
2 He can lead the witness, first of all. Second of all, my
3 understanding of the point -- I'll give you what time I can.
4 We can resume at 4:00, and you can have some time Monday
5 afternoon, too. But my understanding that the point of this
6 was to flesh out the circumstances under which the tapes were
7 destroyed in order to figure out whether or not you're
8 entitled to a jury instruction on that.

9 And that, in part, turns on whether the destruction
10 was inadvertent, intentional, et cetera. I will let you do
11 what you want, but I want to make sure we're all on the same
12 page about the purpose of today.

13 MR. DWYER: Understood. I think the purpose of
14 today is to establish the nature of the destroyed evidence,
15 whether it's apparently exculpatory or something else. And
16 that's where this is going, Your Honor. If it's apparently
17 exculpatory, the standard is much different than bad faith.

18 THE COURT: Okay.

19 MR. BASIL: Your Honor, just so we're clear, the
20 Court is going to -- it sounds like what we're going to
21 actually have is like a preview of the entirety of the case
22 as to Mr. Boncy and whether this piece of evidence was
23 exculpatory. That's where he's going with this as he's
24 walking through. That's beyond the scope of what the Court
25 talked about.

1 THE COURT: In terms of what conclusions we're
2 going to draw and what we're going to do about the absence of
3 this evidence, I don't think he's wrong that the nature of
4 the evidence is relevant to how we're going to handle it,
5 right? I think he's entitled to that. I just want to make
6 sure we're all on the same page about what we're doing.

7 MR. DWYER: Understood, Your Honor.

8 MR. BASIL: For the Court's information, there is a
9 witness who Mr. Dwyer asked to be available today who is here
10 but had anticipated the hearing being at 12, there would be
11 time this afternoon. His flight is at 6 p.m. That witness
12 will not then be available until during trial next week.

13 So to the extent that the defendant needs to talk
14 to Special Agent, supervisory Special Agent Jamal King, who
15 is the person who ran this system or knows about the system,
16 he's available to testify. But he will not be available to
17 testify when we resume at 4 p.m.

18 THE COURT: He has a flight?

19 MR. BASIL: Yes, Your Honor. He has a flight to go
20 home.

21 THE COURT: At 6?

22 MR. BASIL: Yes, Your Honor.

23 THE COURT: He could probably be here for some
24 period of time, somewhere between 4 and 5, right?

25 MR. BASIL: Conceivably, Your Honor.

1 THE COURT: How long do you want with that witness?

2 MR. DWYER: Your Honor, I don't think I'm going to
3 need that witness for very long at all.

4 THE COURT: Do you want to take him out of order
5 now or at 4?

6 MR. DWYER: I'd prefer to get where we can with
7 this witness and take him out of order then.

8 THE COURT: Okay.

9 MR. DWYER: Do we go to the ELMO briefly, Your
10 Honor?

11 THE COURT: Yes. There's no ELMO in front of the
12 witness, there's no screen.

13 BY MR. DWYER:

14 Q. Okay. We'll do it the old-fashioned way. You see this
15 document, count in 12 pages. I apologize. There's no Bates
16 stamp on it. It's section five, financing.

17 A. Five point --

18 Q. It's 5.1?

19 A. Okay. Very good.

20 Q. And at section 5.1 it says, "As further detailed in
21 Schedule B, factory shall include at least two phases
22 involving investment estimated at 84 million."

23 It's referencing there, however, Schedule B,
24 correct?

25 A. It is.

1 Q. Okay. And Schedule B, which is, if you go to the very
2 last two pages of this exhibit, that's Schedule B.

3 A. Yes.

4 Q. If you go to the last page of the exhibit, it says -- at
5 the bottom it says, "Charitable contribution. The party
6 agrees that JVC shall be required to invest 5 percent of its
7 annual net income for purposes of funding the 'social
8 program' established by the parties."

9 Do you see that?

10 A. I do.

11 Q. Okay. So this was a document that was received by the
12 FBI, correct?

13 A. Yes.

14 THE COURT: Mr. Dwyer, you can still use the ELMO
15 for everything else.

16 MR. DWYER: I just can't see it on my screen.

17 THE COURT: The ELMO is re-initializing. You can
18 use it. We have the audio back up. Today is cursed.

19 BY MR. DWYER:

20 Q. So we just looked at the charitable contribution section.
21 It's 5 percent of its annual net income, correct?

22 A. That's what that says.

23 Q. Subsequent to the receipt of this, after you got -- after
24 the FBI gets this email and the attachment, you had a meeting
25 with Mr. Baptiste in New York City, correct?

1 **A.** There was a meeting with Mr. Baptiste in New York City,
2 yes.

3 **Q.** On December 16, 2015, correct?

4 **A.** That's correct.

5 **Q.** And it was just you and he, correct?

6 **A.** That's correct.

7 **Q.** All right. No Mr. Boncy?

8 **A.** No. He was not present.

9 **Q.** Okay. And at this meeting with Mr. Baptiste you
10 discussed the "5 percent for social programs", correct?

11 **A.** We did.

12 **Q.** I am going to show you a transcript.

13 MS. SMITH: Your Honor, we object to the use of
14 this transcript. We have not received it in advance of the
15 hearing.

16 THE COURT: What's the transcript from, please,
17 Mr. Dwyer?

18 MR. DWYER: It's from an undercover recording that
19 the government provided. I can play the recording, Your
20 Honor, if I can plug into the Court's audio system. I have a
21 clip set up.

22 THE COURT: There's no jury in the box. It's just
23 me.

24 MS. SMITH: I understand, Your Honor. But we have
25 not had a chance to review the transcript. The witness has

1 not had a --

2 THE COURT: Play the tape, Mr. Dwyer.

3 MR. DWYER: Understood, Your Honor. If I can plug
4 it into the Court's audio. It's one clip.

5 BY MR. DWYER:

6 Q. It's you and Mr. Baptiste in a hotel room, correct?

7 A. Yes.

8 Q. During the course of this hotel room, you have a
9 conversation about the social programs, correct?

10 A. Yes.

11 Q. Do you recall what he told you?

12 A. Not specifically.

13 THE COURT: What are the dates of the tapes that
14 were destroyed?

15 MR. DWYER: December 19, Your Honor. This is
16 December 16.

17 THE COURT: I know that. Thank you.

18 (Defendant Exhibit No. 1 admitted.)

19 [Audio tape played and not transcribed.]

20 BY MR. DWYER:

21 Q. Mr. Baptiste is describing 5 percent as something to be
22 put on the table, correct?

23 A. That's what he says.

24 Q. It's consistent with an earlier discussion you had with
25 him that it might potentially relate to some pay-offs, right?

1 **A.** Correct.

2 **Q.** So in this meeting you and Mr. Baptiste are talking about
3 the social programs saying social programs equals pay-offs,
4 correct?

5 **A.** Correct.

6 **Q.** That's the conversation you had with Mr. Baptiste?

7 **A.** At that point.

8 **Q.** And then during the course of this conversation you had a
9 discussion about -- do you recall having a discussion about
10 whether Mr. Boncy knew about this?

11 **A.** I can't recall the specifics.

12 **Q.** Okay. So after this discussion you had a telephone --
13 two telephone calls with Mr. Boncy, correct?

14 **A.** That's correct.

15 **Q.** All right. The two telephone calls with Mr. Boncy
16 occurred on approximately -- on December 19, 2015, correct?

17 **A.** Yes, sir.

18 **Q.** And Mr. Boncy was reaching out to you to speak with you,
19 correct?

20 **A.** He did.

21 **Q.** And ultimately you reached out to him, correct?

22 **A.** Correct.

23 **Q.** And you actually had two calls, correct?

24 **A.** That's true.

25 **Q.** Both on December 19?

1 **A.** Yes.

2 **Q.** And you placed those calls, correct?

3 **A.** I did.

4 **Q.** And you placed them from a phone that you were using as
5 an undercover, correct?

6 **A.** That's correct.

7 **Q.** It was a phone that was provided to you by the FBI,
8 correct?

9 **A.** Correct.

10 **Q.** And during those phone calls -- actually before we get
11 into those calls, this is the first time that you had spoken
12 to Mr. Boncy since your November 12 meeting, correct?

13 **A.** That's true.

14 **Q.** You'd spoken to Mr. Baptiste numerous times, correct?

15 **A.** Yes.

16 **Q.** You met in a hotel room in New York City with
17 Mr. Baptiste, correct?

18 **A.** Yes.

19 **Q.** And you had not talked to Mr. Boncy before the
20 November 12, 2015, meeting?

21 **A.** Correct.

22 **Q.** And your fellow undercover Nello had not spoken to
23 Mr. Boncy since November 12, 2015, correct?

24 **A.** I can't speak for him. I don't know.

25 **Q.** You don't know whether the undercover in the case spoke

1 with the target of the investigation?

2 **A.** No, I don't.

3 **Q.** Okay. Who would we ask about that?

4 MS. SMITH: Your Honor, objection. This is an
5 undercover agent who is a witness. He's not a case agent.
6 He doesn't have the basis for this information.

7 THE COURT: Overruled.

8 **A.** Ask your question again, please.

9 BY MR. DWYER:

10 **Q.** Who would we ask to know who knew what about what was
11 going on in the investigation?

12 **A.** You could ask the undercover you're referencing.

13 **Q.** Okay. What about the case agent? Who's directing the
14 investigation?

15 **A.** The case agent.

16 **Q.** Okay. So as far as you know, this was only the second
17 contact that you had had with Mr. Boncy, correct?

18 **A.** Yes.

19 **Q.** And did you tell the case agent that you were going to
20 have these telephone calls?

21 **A.** Yes.

22 **Q.** Which case agent?

23 **A.** Special Agent Trombly.

24 **Q.** How did you tell him?

25 **A.** Via telephone.

1 Q. How long was the conversation?

2 A. I can't remember. It was three and a half years ago.

3 Q. Okay. What was discussed on that conversation?

4 A. Just that I was to have a conversation with Mr. Boncy.
5 We were going to go over the contract, and I can't remember
6 the specifics. Again it was three and a half years ago.

7 Q. But you were going to go over the contract, correct?

8 A. Yes.

9 Q. And part of what you were going to go over was the social
10 programs, correct?

11 A. I believe in the context we did discuss the social
12 programs, yes.

13 Q. Okay. And you had that discussion with Mr. Trombly?

14 A. What discussion?

15 Q. About what you were going to discuss?

16 A. I think in a general sense we did, but I can't remember
17 the specifics.

18 Q. Okay. Do you keep notes of your goals or objectives of
19 your undercover recordings?

20 A. No.

21 Q. After this planning session, for lack of a better word,
22 with Mr. Trombly, did you reach out to Mr. Boncy?

23 A. Yes.

24 Q. Okay. And that's when you had the two telephone calls?

25 A. Correct.

1 Q. And they totaled approximately, would you agree, about 40
2 minutes of conversation?

3 A. I think that's about right.

4 Q. It's actually you called one time. Did he hang up or did
5 you hang up?

6 A. I can't remember.

7 Q. Okay. Did he hang up angry?

8 A. I don't recall that.

9 Q. Did you hang up angry?

10 A. I don't recall that.

11 Q. Was he yelling at you?

12 A. I don't recall that.

13 Q. Okay. You don't recall it, or it could have happened?
14 What is it?

15 A. I don't recall being angry. I don't recall him being
16 angry.

17 Q. Okay. Fair enough. But you don't have the recording, so
18 you don't really know, correct?

19 A. Correct.

20 Q. Do you recall talking with him about pay-offs?

21 A. I can't recall if we specifically talked either using
22 that term or an overview of that.

23 Q. So you don't know whether you used the term pay-off?

24 A. No, I don't.

25 Q. Did you use the term "bribe"?

1 **A.** I don't remember.

2 **Q.** Is it possible that you did?

3 **A.** It's possible.

4 **Q.** Is it possible that you didn't?

5 **A.** Yes.

6 **Q.** Because we don't have the recording, correct?

7 **A.** That's correct.

8 **Q.** Right. So you did talk about social programs, correct?

9 **A.** I believe we did.

10 **Q.** And when you talked with Mr. Boncy, he said something
11 very different than what Baptiste said, correct?

12 **A.** In the context of some telephone calls, yes.

13 **Q.** What does "in the context of some telephone calls" mean,
14 Special Agent?

15 **A.** There was a subsequent telephone call with Mr. Baptiste
16 where we referenced the phone calls I had with Mr. Boncy.

17 **Q.** And when you referenced the phone calls that you had with
18 Mr. Boncy in the subsequent call with Mr. Baptiste, you are
19 accurately relating what Mr. Boncy said to you on the
20 telephone, correct?

21 **A.** I would say that's true.

22 **Q.** Okay. You weren't lying. That was not a lie?

23 **A.** No, I don't believe it was.

24 **Q.** Okay. And when you talked with Mr. Baptiste one day
25 after December 19, you told him that Mr. Boncy said something

1 very different about the social programs, correct?

2 MS. SMITH: Objection, Your Honor.

3 THE COURT: Basis?

4 MS. SMITH: The attorney is referencing a
5 transcript, and the transcript does not say what he is saying
6 it says.

7 THE COURT: Overruled.

8 BY MR. DWYER:

9 Q. Would it help you to listen to the recording?

10 A. It would.

11 MR. DWYER: Your Honor, I'd request to play a clip
12 from that phone call.

13 THE COURT: That's fine. Go ahead.

14 [Audio tape played and not transcribed.]

15 BY MR. DWYER:

16 Q. You didn't know who to believe?

17 A. That's what I said.

18 Q. Because Baptiste says for pay-offs and Richard said it
19 was for something else, right?

20 A. That is possible.

21 Q. Why do you think it's possible?

22 A. Because the technique used to elicit details from people
23 is to feign confusion about a topic.

24 Q. Special Agent, you just testified that what you relayed
25 about your phone call with Mr. Boncy was accurate as to what

1 happened on the call with Mr. Boncy.

2 **A.** I can't remember exactly what we spoke about on the call,
3 sir.

4 **Q.** I understand that. So you're saying that you could have
5 been making this up or maybe you weren't making it up?

6 **A.** No, sir. That's not accurate. The way it's
7 characterized in my call with Mr. Baptiste is to allow him to
8 explain more about what the 5 percent is for.

9 **Q.** But isn't it true that Mr. Boncy told you something
10 different than what Baptiste told you in New York?

11 **A.** I believe he did, yes.

12 **Q.** And it indicated this was not for pay-offs, correct?

13 **A.** It could have, yes.

14 **Q.** Let's listen to the rest of the recording.

15 MR. DWYER: Your Honor, I'd ask to put the
16 transcript in front of the witness although the government
17 has not seen it yet. I think the witness was a participant
18 to it, and I think it would make it easier to go back and
19 forth.

20 THE COURT: I'm sure it would make it easier for
21 him, but they're objecting to it, and he hasn't had a chance
22 to review it either.

23 MR. DWYER: Understood.

24 [Audio tape played and not transcribed.]

25 BY MR. DWYER:

1 **Q.** You said there, "Because when you and I talked, my
2 understanding was that's money to pay off politicians."

3 Did you hear that?

4 **A.** Yes.

5 **Q.** That's your voice?

6 **A.** Yes.

7 **Q.** And Richard said something different than that, correct?

8 **A.** I believe he did.

9 **Q.** On the telephone?

10 **A.** Yes.

11 **Q.** On the 19th?

12 **A.** Yes.

13 **Q.** And the heart of this case is a conspiracy basically to
14 pay off politicians, correct?

15 **A.** Yes.

16 **Q.** And Richard said something different than that, correct?

17 **A.** I believe he did.

18 **Q.** And when I say Richard, I mean Mr. Boncy.

19 **A.** Yes, sir.

20 **Q.** And, in fact, the cement project that you were planning
21 on doing with Mr. Baptiste and Mr. Boncy, you didn't go
22 forward with it, correct?

23 **A.** That's correct.

24 **Q.** It was issues about the financing, the budget, political
25 unrest in Haiti, correct?

1 **A.** Yes.

2 **Q.** That was what you have claimed, right?

3 **A.** Yes.

4 **Q.** Okay. So in this same phone call you had discussions
5 about doing other projects with Mr. Baptiste, correct?

6 **A.** I believe so.

7 **Q.** But you wanted to make sure that Richard wasn't involved,
8 correct?

9 **A.** I don't know what you're referencing.

10 **Q.** Okay.

11 MR. DWYER: Your Honor, if I could play another
12 clip?

13 THE COURT: Yes.

14 MR. DWYER: If I could just set it up.

15 BY MR. DWYER:

16 **Q.** You were talking to Mr. Baptiste about potentially
17 bringing into Miami the finance minister from Haiti, correct?

18 **A.** Correct.

19 **Q.** His name is Lalo, is that right?

20 **A.** I believe so.

21 **Q.** That's what you understood?

22 **A.** At the time, yes.

23 **Q.** You wanted him to come in and pitch you on some deals,
24 and maybe you would make another undercover corrupt scheme in
25 that deal, correct?

1 **A.** It's a possibility, yes.

2 **Q.** That was the goal?

3 **A.** Mm-hmm.

4 **Q.** Okay.

5 [Audio tape played and not transcribed.]

6 BY MR. DWYER:

7 **Q.** You were asking if Richard has anything to do with those
8 projects?

9 **A.** Yes.

10 **Q.** Who cares? Why did you?

11 MS. SMITH: Objection, Your Honor.

12 BY MR. DWYER:

13 **Q.** Why did you ask that question?

14 THE COURT: Hold on a second. What's the basis?

15 MS. SMITH: Argumentative. Commentary.

16 THE COURT: Overruled.

17 **A.** Can you ask your question again, please?

18 BY MR. DWYER:

19 **Q.** You asked if Richard had anything to do with these
20 projects, correct?

21 **A.** Yes.

22 **Q.** And that's, in part, because Richard did not seem to be
23 on board with what Baptiste was talking about, correct?

24 **A.** I just wanted to understand if Boncy was involved with
25 these other projects.

1 **Q.** Okay.

2 [Audio tape played and not transcribed.]

3 BY MR. DWYER:

4 **Q.** Isn't it true, Agent, you're trying to make sure that
5 Richard has no part of those projects?

6 **A.** No.

7 **Q.** You raised it again in the same call. Do you recall
8 that?

9 **A.** No, I don't.

10 MR. DWYER: May I play another clip?

11 THE COURT: Sure.

12 [Audio tape played and not transcribed.]

13 BY MR. DWYER:

14 **Q.** So that's the second time you said, "If it doesn't have
15 to do with Richard, that's fine with me. We'll move
16 forward."

17 **A.** That's correct. If these new projects being discussed
18 did not involve Boncy, then we'll move forward without Boncy.

19 **Q.** And, of course, the day before you had spoken with
20 Mr. Boncy for 40 minutes. And during that call Mr. Boncy had
21 made clear that the social programs had indicated something
22 different than what Baptiste said, correct?

23 **A.** Different, correct.

24 **Q.** Baptiste says pay-offs. Richard says something
25 different, correct?

1 **A.** Correct.

2 **Q.** To a point that you called Baptiste to follow up on it,
3 correct?

4 **A.** Correct.

5 **Q.** Okay. And the case agent knew that, correct?

6 **A.** We debriefed after my telephone calls with Boncy.

7 **Q.** You told him that Boncy says social programs don't have
8 anything to do with pay-offs. What did you tell him?

9 **A.** I can't remember specifically, sir, what we talked about
10 three and a half years ago after my telephone calls with
11 Boncy.

12 **Q.** Why didn't you write it down?

13 **A.** Because we don't do that.

14 **Q.** Why not?

15 **A.** Because the calls have been recorded.

16 **Q.** Were they?

17 **A.** They were recorded.

18 **Q.** You listened to it?

19 **A.** I did not.

20 **Q.** Who listened to it?

21 **A.** I don't know.

22 **Q.** Did the case agent?

23 **A.** I don't know.

24 **Q.** Where are they today?

25 **A.** I couldn't tell you.

1 Q. What did you do to secure the evidence?

2 A. I used the FBI's auxiliary system to record the testimony
3 phone calls. I had no reason to believe it had
4 malfunctioned.

5 Q. Did it malfunction?

6 A. I don't believe it did.

7 Q. You don't know?

8 A. Correct.

9 Q. Nobody knows?

10 A. I don't know.

11 Q. Okay. But what we do know is there was a call with a
12 target of an investigation, correct?

13 A. Yes, sir.

14 Q. Then there was a second call with the target of the
15 investigation, correct?

16 A. That's correct.

17 Q. And on those calls he said something different than what
18 was the heart of the charged conspiracy, correct?

19 A. He said something different, yes, sir.

20 Q. Okay. And those calls were not saved by the FBI,
21 correct?

22 A. I don't know what happened to those calls, sir.

23 Q. And you couldn't get up on the stand and give us 40
24 minutes of back and forth to say what happened on that phone
25 call, correct?

1 **A.** No, sir. It was three and a half years ago.

2 **Q.** I understand that. I have a hard time three and a half
3 weeks ago. It's fair. That's why you record, correct?

4 **A.** That's correct.

5 **Q.** But you're supposed to do something with the evidence,
6 correct?

7 **A.** Can you be more specific?

8 **Q.** You're supposed to preserve it?

9 **A.** It was recorded.

10 **Q.** You're supposed to preserve it, correct?

11 **A.** Evidence should be preserved, yes.

12 **Q.** That's FBI policy, correct?

13 **A.** Yes.

14 **Q.** Preserve the evidence?

15 **A.** Yes, it is.

16 **Q.** So in this case whose job was it to preserve that
17 evidence?

18 **A.** I can't say specifically, sir. I made the phone calls,
19 and that was the end of my involvement with that evidence.

20 **Q.** But how do you make sure that the evidence gets saved?

21 **A.** That was not my role.

22 **Q.** I understand that. But your job, as you said, is to make
23 recordings. It's the best evidence that the FBI can get.
24 How do you make sure that that is preserved?

25 **A.** I trust in the system that I used.

1 Q. And what is that system?

2 A. I refer to it as an auxiliary recording system that the
3 FBI has.

4 Q. Did it work?

5 A. I have no reason to think that it didn't.

6 Q. How do you double-check that it works?

7 A. I don't.

8 Q. Have you ever double-checked that it works?

9 A. No.

10 Q. Do you now double-check that it works?

11 A. No.

12 Q. You still don't care?

13 A. I wouldn't characterize it that way.

14 MS. SMITH: Objection, Your Honor. Argumentative.

15 THE COURT: Overruled.

16 MR. DWYER: Your Honor, if I can just have a
17 moment. You said you needed to quit at 12:45, correct?

18 THE COURT: If you can finish with him, and I can
19 possibly go a few minutes over and get the cross done, I'm
20 going to do that.

21 MR. DWYER: Okay.

22 BY MR. DWYER:

23 Q. Let me just double-check. There is no email that relates
24 to contents of the two lost calls?

25 A. Not that I'm aware of.

1 Q. No FBI 302?

2 A. Not that I'm aware of.

3 Q. Any other type of written report?

4 A. Not that I'm aware of.

5 Q. And you told essentially -- you told the case agent in
6 this case that on that call Boncy had said something
7 different than Baptiste about what was going on with the
8 social programs, correct?

9 A. The case agent and I debriefed over the telephone after
10 the call. I don't recall exactly what we spoke about, but it
11 was a general discussion about what took place on the calls
12 with the knowledge that the calls had been recorded.

13 Q. And what took place on the calls, just so it's clear,
14 generally, you can't remember the specifics, is that Richard
15 Boncy said that the social programs were for something other
16 than pay-offs, correct?

17 A. They were for something different.

18 Q. Different than pay-offs, right?

19 A. I believe so.

20 Q. And the facts that social programs were for pay-offs are
21 what you believed to make the scheme illegal, correct?

22 A. That was part of the scheme, yes.

23 MR. DWYER: No further questions, Your Honor.

24 CROSS EXAMINATION

25 BY MS. RUBIN-SMITH:

1 Q. Good afternoon, Agent.

2 A. Good afternoon.

3 Q. Did you record the calls that you made in this case?

4 A. Yes, I did.

5 Q. How did you record them?

6 A. I used the FBI's auxiliary monitoring program.

7 Q. Were you also aware that there was a Title III wiretap in
8 this case?

9 A. Yes, I was.

10 Q. When you were recording the calls in this case, how long
11 did you think those calls would be preserved?

12 A. Indefinitely.

13 Q. Where did you think they would be preserved?

14 A. On a computer system somewhere.

15 Q. Have you previously used this auxiliary system to record
16 calls in other cases?

17 A. Yes.

18 Q. Were you an undercover in those other cases?

19 A. Yes.

20 Q. How many times have you used this system to record calls
21 in other cases?

22 A. Dozens.

23 Q. In those other cases, was it your job to actually
24 download or preserve the calls that were recorded?

25 A. No.

1 Q. So was it your job just to make the recording?

2 A. Yes.

3 Q. Directing your attention to these two December 19 calls
4 with defendant Boncy, did you have any reason to believe that
5 your recording was unsuccessful?

6 A. No.

7 Q. Did you tell anyone, any of the case agents, to destroy
8 the recording?

9 A. No.

10 Q. Did anyone at the FBI tell you that the recording was
11 destroyed?

12 A. No.

13 Q. Did anyone in the case tell you that Mr. Boncy was no
14 longer a target of the investigation?

15 A. No.

16 Q. There was discussion of the 5 percent and the social
17 programs. Directing your attention to a meeting that you had
18 on November 12, 2015, was Mr. Boncy at that meeting?

19 A. He was.

20 Q. Was Mr. Baptiste at that meeting?

21 A. Yes.

22 Q. Was there a discussion of social programs at that
23 meeting?

24 A. Yes.

25 Q. What was the context of that discussion?

1 **A.** The context of the discussion was that the social
2 programs were needed to ensure the success of the cement
3 factory being built in Haiti.

4 **Q.** And were the social programs described to you by
5 Mr. Baptiste and Mr. Boncy?

6 **A.** Yes.

7 **Q.** How were they described?

8 **A.** Described as money that would be used for the benefit of
9 local politicians.

10 **Q.** Did you understand that social programs included bribes?

11 **A.** Yes.

12 **Q.** Was a 5 percent number discussed in the context of social
13 programs?

14 **A.** Yes, it was.

15 **Q.** Were bribes discussed using other terms at that meeting
16 as well?

17 **A.** Yes.

18 **Q.** What kinds of terms were used to discuss bribes at that
19 meeting?

20 **A.** I believe that day the term "pay to play" was used.

21 **Q.** Was the term "unforeseen expenses" also used to describe
22 bribes?

23 **A.** Unforeseen expenses was used.

24 MR. DWYER: Your Honor, I am going to object here.

25 If we can get some foundation as to who is saying what. I

1 think it's important. There's multiple people in this
2 meeting.

3 THE COURT: I think her point is that he's there
4 when it's being discussed. So he's hearing it if he's not
5 saying it. If you, on those things pay to play and
6 unforeseen expenses, if you can try and elicit who said it.

7 BY MS. RUBIN-SMITH:

8 Q. Was Mr. Boncy present at the meeting when those terms
9 were discussed?

10 A. Yes.

11 Q. Did Mr. Boncy ever say that social programs would not be
12 used to pay bribes?

13 A. No.

14 Q. Did Mr. Boncy ever say that unforeseen expenses are for
15 something else other than bribes?

16 A. No.

17 Q. Did Mr. Boncy tell you what he did, what his job was?

18 A. Yes.

19 Q. What did he tell you about his job?

20 A. He was the CEO of the company.

21 Q. Which company?

22 A. Haiti Invest.

23 Q. Did Mr. Boncy also tell you that he used to work in
24 compliance?

25 A. Yes. He described to me his extensive career with

1 compliance with Honeywell and another company I believe
2 called Medtronic.

3 **Q.** And Mr. Sales, was his job described to you?

4 **A.** Yes.

5 **Q.** Was he at the meeting the entire time?

6 **A.** He was.

7 **Q.** What was his job?

8 **A.** His job was as a member in Haiti Invest.

9 **Q.** Was he also described as a lawyer?

10 **A.** I believe he was, yes.

11 **Q.** Did Mr. Baptiste refer to Mr. Boncy and Mr. Sales as
12 lawyers?

13 **A.** He did.

14 **Q.** What did he say about their job as lawyers?

15 **A.** With regards to Haiti Invest?

16 **Q.** Anything that you remember about what he said as their
17 job as lawyers at that meeting?

18 **A.** He said that their job as lawyers was to -- there was
19 specific language used to describe everybody's roles in the
20 meeting, and I don't want to misspeak by saying it
21 incorrectly.

22 **Q.** Do you remember Mr. Sales mentioning corrupt practice?

23 **A.** Yes.

24 **Q.** In what context was that mentioned?

25 **A.** Mentioned that we cannot have corrupt practice, I believe

1 is what he said.

2 **Q.** Was that in the same conversation that social programs
3 were discussed in terms of bribes?

4 **A.** Yes.

5 **Q.** Were you aware of the content of the calls that were
6 intercepted on the Title III wiretap on Mr. Baptiste's phone?

7 **A.** No.

8 **Q.** Did you know who Mr. Baptiste was talking to?

9 **A.** No.

10 **Q.** Were you aware of any Title III wiretap calls between
11 Mr. Baptiste and Mr. Boncy or the concept of the of those
12 calls?

13 **A.** No, I wasn't.

14 **Q.** Were you aware of the context of emails that were
15 exchanged between Mr. Boncy and Mr. Baptiste?

16 **A.** No, I wasn't.

17 **Q.** You were asked whether Mr. Boncy was angry during his
18 phone call with you on December 19?

19 **A.** I was.

20 **Q.** I'm sorry?

21 **A.** I was asked that, yes.

22 **Q.** And do you recall Mr. Boncy being angry?

23 **A.** No, I don't.

24 **Q.** Does that mean you don't remember it, or you remember
25 that he was not angry?

1 **A.** I don't remember him being angry during that phone call.

2 **Q.** If Mr. Boncy were angry during that phone call, do you
3 think you would have remembered it?

4 MR. DWYER: Objection. Calls for speculation.

5 THE COURT: Overruled.

6 **A.** I believe I would remember that, yes.

7 BY MS. RUBIN-SMITH:

8 **Q.** Why is that?

9 **A.** Because it's an emotional response, and I would likely
10 have a stronger memory of a conflict or confrontation with
11 someone than I would if the conversation were benign.

12 **Q.** Now, in terms of what led to that December 19 call, do
13 you remember anything about the cost of the project?

14 **A.** Yes.

15 **Q.** What do you remember about that?

16 **A.** I remember that I had been told by the case agent that
17 the cost of the project had been communicated as going up by
18 I think \$24 million.

19 **Q.** Was that one of the reasons for your call?

20 **A.** Yes.

21 **Q.** Now, the meeting with Baptiste in Miami on December 29,
22 2015, do you know the purpose of that meeting?

23 **A.** It was to go over again additional contract information.

24 **Q.** Do you know if there were any other purposes that the FBI
25 had for that meeting?

1 **A.** I believe it was possible that a confrontation would take
2 place between the FBI and Mr. Baptiste.

3 **Q.** Did a confrontation take place?

4 **A.** Yes, it did.

5 **Q.** When you asked in the recording that defense counsel
6 played if Richard is involved in other projects with Lalo,
7 why did you ask that?

8 **A.** I just wanted to understand the scope of involvement for
9 these additional involvements which were being discussed.

10 **Q.** Is that part of your job as an undercover?

11 **A.** Yes, it is.

12 **Q.** Did you ever tell --

13 MS. SMITH: May I have a moment, Your Honor?

14 THE COURT: Yes.

15 BY MS. RUBIN-SMITH:

16 **Q.** One more question, Agent. Do you recall Mr. Baptiste
17 ever telling you that Boncy would be careful in discussing
18 bribery with you?

19 **A.** Yes.

20 **Q.** What did Mr. Baptiste say about that?

21 **A.** He says he has to be careful. He wanted to insulate
22 himself. He didn't want to talk like that. Things of that
23 effect, words of that effect.

24 MS. SMITH: Thank you. Nothing further.

25 MR. DWYER: Brief redirect?

1 THE COURT: Yes.

2 REDIRECT EXAMINATION

3 BY MR. DWYER:

4 Q. Agent, the meeting in Boston that was discussed on cross
5 examination with Ms. Rubin-Smith, you testified that
6 Mr. Boncy was present when the term "pay to play" was used?

7 A. No. That term was used during the Boston meeting on
8 November 12.

9 Q. Okay. Was Mr. Boncy present when that term was used?

10 A. I don't believe he was present when that specific term
11 was used.

12 Q. Okay. And then you also talked about the social programs
13 being used -- or the 5 percent being used to pay bribes. Was
14 Mr. Boncy present for that conversation?

15 A. I don't believe he was present for that conversation.

16 Q. Because you had a side conversation with Mr. Baptiste,
17 correct?

18 A. That is correct.

19 Q. You took him into another room, correct?

20 A. Correct.

21 Q. He and you spoke very, for lack of a better word, dirty
22 talk with Mr. Baptiste?

23 A. We were using very clear language.

24 Q. You used pay to play with Mr. Baptiste, and you talked
25 about the 5 percent being the amount for bribes with

1 Mr. Baptiste?

2 **A.** Correct.

3 **Q.** But those conversations didn't occur in the presence of
4 Mr. Boncy, correct?

5 **A.** Those specific conversations did not occur in his
6 presence.

7 **Q.** I just wanted to clear that. You testified that you
8 would believe these recordings would have been retained
9 indefinitely?

10 **A.** Yes, sir.

11 **Q.** What's the basis for that?

12 **A.** Because it's evidence, and it's recorded.

13 **Q.** Okay. But just because you record it, it's retained
14 indefinitely?

15 **A.** That is what I assumed.

16 **Q.** And what was that assumption based on?

17 **A.** Just being an FBI agent and the fact we're recording
18 evidence.

19 **Q.** Have you ever heard the term ELSUR?

20 **A.** I believe it's pronounced ELSUR, but yes.

21 **Q.** ELSUR. It's an acronym, right?

22 **A.** It is.

23 **Q.** What does it stand for?

24 **A.** I believe it stands for electronic surveillance.

25 **Q.** That is the FBI's way to retain electronic surveillance,

1 correct?

2 **A.** That's the term we use, yes.

3 **Q.** How did you confirm -- and frankly policy requires you to
4 check in electronic evidence to ELSUR, correct?

5 **A.** When electronic evidence is collected, policy is that it
6 is turned in, yes.

7 **Q.** How did you ensure that the two phone calls with
8 Mr. Boncy was checked into ELSUR?

9 **A.** I didn't.

10 **Q.** You didn't. Who confirmed that it was checked into
11 ELSUR?

12 **A.** I don't know.

13 **Q.** Was it checked into ELSUR?

14 **A.** I don't know.

15 **Q.** Sitting here today you still don't know?

16 **A.** No, I don't.

17 **Q.** But it's FBI policy to check in all electronic evidence
18 into ELSUR?

19 **A.** Yes.

20 MR. DWYER: If I could just have a moment, Your
21 Honor. Nothing further, Your Honor.

22 THE COURT: Recross?

23 RECROSS EXAMINATION

24 BY MS. RUBIN-SMITH:

25 **Q.** Agent, you were asked about why you thought evidence was

1 preserved indefinitely in terms of recording.

2 **A.** Yes.

3 **Q.** Do you know how long wiretap evidence is preserved?

4 **A.** No, I don't.

5 **Q.** You were asked about some statements that were made at
6 the November 12 meeting in the conference room?

7 **A.** Yes.

8 **Q.** Okay. Do you recall a statement where Mr. Boncy said he
9 hasn't paid a cent yet?

10 **A.** Yes.

11 **Q.** And do you recall Mr. Baptiste saying that it takes
12 longer because he doesn't want to spend the money?

13 **A.** Yes.

14 **Q.** And do you recall Mr. Boncy saying "if I had the funds"?

15 **A.** I do.

16 **Q.** Do you recall Mr. Boncy saying he gets information from
17 the Bureau of Mines?

18 **A.** Yes.

19 **Q.** And do you recall what he said about the need to pay
20 them?

21 **A.** I don't recall specifically what he said.

22 **Q.** Do you recall him saying that he doesn't need to pay
23 them?

24 **A.** Yes.

25 **Q.** And do you recall confirming that they don't need to get

1 paid?

2 **A.** Yes.

3 **Q.** And do you recall his response being "for those guys,
4 no."

5 **A.** I do remember that.

6 **Q.** Now, do you remember Mr. Baptiste and Mr. Sales
7 discussing the 5 percent of unforeseen expenses being built
8 into the proposal?

9 **A.** Yes.

10 **Q.** Was that in the context of bribery expenses?

11 **A.** Yes.

12 **Q.** Was Mr. Boncy present during that discussion?

13 **A.** Yes, he was.

14 **Q.** Did Mr. Boncy say anything to contradict those
15 statements?

16 **A.** No, he did not.

17 **Q.** Did you attempt to be clear in that meeting, in the group
18 meeting with Mr. Boncy and Mr. Baptiste and Mr. Sales, that
19 when you were talking about unforeseen expenses and social
20 programs, that you had the same understanding you were
21 discussing bribes?

22 **A.** Yes.

23 **Q.** And did you use the words "pay to play" to confirm that
24 you all had the same understanding?

25 **A.** I believe I did.

1 MR. DWYER: Objection. Never mind, Your Honor.
2 Let it stand.

3 MS. SMITH: Nothing further.

4 THE COURT: All right. I'll see you all back at 4.

5 MR. DWYER: Thank you, Your Honor.

6 (Court recessed at 12:57 p.m.)

7 THE CLERK: Can you please raise your right hand.

8 (JAMAL CRAIG KING duly sworn by the Deputy Clerk.)

9 THE CLERK: Can you please state your name and
10 spell your last name for the record.

11 THE WITNESS: My full name is Jamal Craig King.
12 Last name is spelled K-I-N-G.

13 MR. DWYER: Your Honor, may I inquire?

14 THE COURT: Yes.

15 MR. DWYER: For the record Jed Dwyer on behalf of
16 Mr. Boncy. Present with me here at counsel table is
17 Mr. Boncy.

18 DIRECT EXAMINATION

19 BY MR. DWYER:

20 **Q.** Special Agent King, did you prepare an affidavit in
21 connection with a response to a motion?

22 **A.** I did.

23 **Q.** And putting aside the handwriting on this affidavit and
24 highlighting, which, please don't pay any attention to, does
25 that appear to be the affidavit?

1 **A.** Yes.

2 MR. DWYER: Your Honor, identify this as 6 and move
3 for admission.

4 THE COURT: Hold on. Any objection?

5 MR. BASIL: No, Your Honor. But it's already
6 attached to our motion.

7 THE COURT: It's already admitted.

8 MR. DWYER: Very well.

9 BY MR. DWYER:

10 **Q.** Is there anything in the affidavit that you would like to
11 change or correct?

12 **A.** No.

13 **Q.** Is there anything in the affidavit that you would like to
14 expand on?

15 **A.** No.

16 **Q.** I know you have a flight today so I want to move through
17 this somewhat quickly, and I apologize for being quick.

18 **A.** Yes, sir.

19 **Q.** In your affidavit you discuss an FBI consensual recording
20 system that you were familiar with in 2015; is that correct?

21 **A.** That's correct.

22 **Q.** And that recording system, that consensual recording
23 system, where was it located?

24 **A.** The system itself was located in Quantico, Virginia.

25 **Q.** When you say the system itself, what is that made up of?

1 **A.** The system is a collection of servers.

2 **Q.** The consensual, it's referred to as a consensual
3 recording system. What is consensual about it?

4 **A.** It's consensual with respect that the individuals
5 recording phone calls are cooperators, and they're the ones
6 who have given their consent to record their phone calls.

7 **Q.** Okay. And do undercover agents use it as well?

8 **A.** Yes.

9 **Q.** And they would give their consent as well?

10 **A.** Correct.

11 **Q.** And when they're using this phone system, are they
12 assigned a specific phone number?

13 **A.** They can use a phone number, yes.

14 **Q.** Okay. They're not given a specific one? Does the system
15 assign it one?

16 MR. BASIL: Your Honor, we're getting very close to
17 law enforcement sensitive information on how the system
18 actually operates.

19 THE COURT: Well, the witness can let us know when
20 he's reached his limit on it.

21 MR. BASIL: Okay. Just to alert the Court.

22 **A.** I do believe that is getting a little bit into the law
23 enforcement sensitive aspect of the system.

24 BY MR. DWYER:

25 **Q.** Okay. I've heard of consensual Title III. Have you ever

1 heard of that?

2 **A.** Yes, I have.

3 **Q.** Is it similar to a consensual Title III?

4 **A.** Yes, it is.

5 **Q.** Is it almost the same?

6 **A.** It is similar in that it records the phone calls of
7 consenting parties.

8 **Q.** So every single phone call going out and every single
9 phone call coming in is recorded?

10 **A.** When placed through the system, yes.

11 **Q.** Tell us in connection with that, with an undercover who
12 is operating in a case in Boston, what's the interplay
13 between Quantico and Boston in collection of the data?

14 **A.** Phone calls are recorded at Quantico. And then the
15 recorded phone calls are transferred to Boston for download.

16 **Q.** Okay. When you say "transferred to Boston for download",
17 what does that mean?

18 **A.** It means that the recorded phone calls are transferred
19 via a network connection to a Boston terminal to be
20 downloaded.

21 **Q.** Okay. Is there an email or something that accompanies
22 them? How does somebody know that, uh-oh, we've got
23 something to download?

24 **A.** The system, if configured, there could be or would be an
25 email component. However, it's incumbent upon the cooperator

1 to also inform the case agent that the recording has
2 happened.

3 **Q.** Okay. So you've got an aspect of somebody who makes the
4 phone call is supposed to call the case agent and say, yeah,
5 I made the phone call. Is that what you're saying?

6 **A.** Correct.

7 **Q.** All right. Same thing with the undercover, they're
8 supposed to call and say, hey, I made the phone call?

9 **A.** Yes.

10 **Q.** But there's also part of the system that sends a
11 notification to the field office, right?

12 **A.** If that was configured.

13 **Q.** Okay. Who chooses how to configure it?

14 **A.** That be would the technical personnel setting up the
15 account.

16 **Q.** Okay. So you know that in this case there was an account
17 that was set up, correct?

18 **A.** Correct.

19 **Q.** Did you look to see whether it provided notification to
20 the Boston field office?

21 **A.** I did not.

22 **Q.** Okay. Would you be able to find that information out for
23 us?

24 **A.** Possibly, yes.

25 **Q.** So normally in that type of a situation where

1 notification is set up, a case agent gets the email saying
2 that something's come in, right?

3 **A.** I believe the way the system is configured, it would
4 actually go to what's known as an ELSUR operations
5 technician.

6 **Q.** An ELSUR operations technician?

7 **A.** Yes.

8 **Q.** Is that an FBI employee?

9 **A.** Yes, it is.

10 **Q.** Are they located in the field office?

11 **A.** Yes, they are.

12 **Q.** So in this case we have two phone calls that no longer
13 exist, correct?

14 **A.** Correct.

15 **Q.** And it's possible, you don't know, that notification of
16 those phone calls and that there were recordings to download
17 was sent to an ELSUR operations technician in Boston?

18 **A.** It could be possible.

19 **Q.** Okay. How would we find that out?

20 **A.** We would have to go back and determine who were the EOT's
21 at that time to determine if an email was sent to them.

22 **Q.** Okay. And could it also be sent to the case agent?

23 **A.** It's my recollection that the email notification
24 capability only went to EOT's.

25 **Q.** Okay. In this case did anyone ask you to look for that

1 notification capability?

2 **A.** No.

3 **Q.** Was it ever discussed?

4 **A.** Not that I'm aware of.

5 **Q.** That notification and/or the phone call, whatever, the
6 link is sent to Boston. Is the file of the phone call itself
7 sent to Boston?

8 **A.** The files are transferred from Quantico to the Boston
9 computer.

10 **Q.** Okay. And then you said something about downloading.
11 Where are you downloading from?

12 **A.** You're downloading from the Boston computer.

13 **Q.** Okay. So the phone call is made and a file is created;
14 is that right?

15 **A.** Correct.

16 **Q.** What type of a file is it?

17 **A.** It's a wave file.

18 **Q.** Okay. And then that wave file is stored in Quantico?

19 **A.** It's stored for at least 30 days, yes.

20 **Q.** Okay. And then at some point it's also sent up to
21 Boston?

22 **A.** Correct.

23 **Q.** When in that 30 days?

24 **A.** So there is an automatic process which transfers the
25 phone call from Quantico to the Boston work station the day

1 after the phone call takes place.

2 **Q.** So the day after a phone call -- let's use a real life
3 example. December 19, 2015, two phone calls were placed to a
4 phone that was working on the system, of the consensual
5 system.

6 Do you recall that?

7 **A.** Correct.

8 **Q.** So a day after that, December 20, notification would have
9 come up to Boston that there's a file here?

10 **A.** If it was configured. If the notification option was
11 configured.

12 **Q.** Okay. And would it automatically get transferred from
13 Quantico to Boston?

14 **A.** Yes.

15 **Q.** Okay. So when would that happen?

16 **A.** Automatic transfers typically happen some time in the
17 morning after the phone call was recorded.

18 **Q.** Okay.

19 **A.** Additionally, if the call was needed sooner than that,
20 the call could be manually pulled down to the Boston
21 computer.

22 **Q.** So if an undercover had a conversation with the case
23 agent and they said, hey, this is a phone call you need to
24 listen to, they could go onto the system and pull it down?

25 **A.** The individual who had access to that account could log

1 into the system and do an update to pull the call sooner.

2 **Q.** Okay. So it's possible that a notification would go to
3 Boston. And regardless of where the notification went, the
4 file would be transferred the next morning?

5 **A.** Correct.

6 **Q.** Is it a copy of the file, or is it the same file?

7 **A.** It's a copy of the file.

8 **Q.** And regardless, the case agent could reach into the
9 system, and if appropriately authorized, download it?

10 **A.** Yes.

11 **Q.** Who was the appropriately authorized person on December
12 2015 for the system for the telephone that is at issue in
13 this case?

14 **A.** To my understanding it was Special Agent Chambers.

15 **Q.** Vincent Chambers?

16 **A.** That is my understanding.

17 **Q.** How did you come to that understanding?

18 **A.** There is a case agent assigned to the account with the
19 account name of Chambers.

20 **Q.** Did you look inside the internal FBI database to get that
21 information?

22 **A.** Yes.

23 **Q.** And Chambers was assigned during this time period?

24 **A.** Yes.

25 **Q.** Okay. Did anyone else have authority?

1 **A.** Well, the EOT's, as I mentioned before, have global
2 access to all of the calls as part of their duties.

3 **Q.** The EOT's are the electronic operations?

4 **A.** Operations technician.

5 **Q.** Technician. So it would be the Boston EOT would have had
6 access, too?

7 **A.** Yes.

8 **Q.** Okay. And as far as you know it was Chambers who was
9 assigned?

10 **A.** Yes.

11 **Q.** At some point in time did that change?

12 **A.** It did.

13 **Q.** When was that?

14 **A.** Approximately June of 2016 I believe.

15 **Q.** Who became the authorized user?

16 **A.** It would be special agent Garrett Trombly.

17 **Q.** Who do you go to to be authorized? Who makes that
18 decision? Who says, yeah, it's Vincent or it's Garrett? Who
19 does that?

20 **A.** It's the case agent who makes that determination as to
21 who should be associated with the account.

22 **Q.** Okay. So the case agent would just reach out to who?

23 **A.** The case agent would have to reach out to their local
24 technical personnel to designate a new case agent to be
25 assigned to the account.

1 **Q.** So switching now to the files that are down at Quantico.
2 You said they would be saved for at least 30 days?

3 **A.** Yes.

4 **Q.** How long would they be saved? That's an at least. Do
5 you know how long they could be saved?

6 **A.** They could potentially be saved for years until at such
7 time we needed to recover hard drive space from the server.

8 **Q.** Okay. And so if you needed the space, they'd get knocked
9 out? Is that basically it?

10 **A.** We would remove calls from the system, the oldest calls
11 first in order to recover hard disk space.

12 **Q.** Do you keep track of when things are deleted off the
13 system?

14 **A.** No, we don't.

15 **Q.** Today does anything get deleted off the system?

16 **A.** As it exists today, no.

17 **Q.** When did that change?

18 **A.** In October of 2018.

19 **Q.** Why did it change?

20 **A.** Due to advances in technology, we instituted a
21 reengineering effort of the system, and that's one of the
22 changes that we implemented.

23 **Q.** Have you been involved in other cases like this where
24 files were lost?

25 **A.** No.

1 Q. This is the first time?

2 A. This is the first time that I've had to testify about a
3 matter like this, yes.

4 Q. And how long have you been working with the FBI?

5 A. 14 years.

6 Q. And how long down in Quantico?

7 A. Approximately four years.

8 Q. And how long on this system?

9 A. I have been the accountable supervisor for the system
10 since August of 2016.

11 Q. August of 2016?

12 A. Yeah.

13 Q. So since August of 2016 to today, you're the supervisor
14 of this system?

15 A. Yes.

16 Q. This has never happened before with the FBI as far as you
17 know?

18 A. As far as I know.

19 Q. Would it rise to the level of you as the supervisor of
20 the system to know whether or not it happened?

21 A. If it was brought to my attention, yes.

22 Q. How do the case agents and the other folks get trained on
23 the usage of the system?

24 A. They're trained by their technical personnel in the
25 field.

1 Q. So that's something done in the field, not by Quantico
2 personnel?

3 A. Correct.

4 Q. Do you keep track of that training?

5 A. No, we don't.

6 Q. Does the local office keep track of it?

7 A. I'm not aware if they do.

8 Q. Just to be clear, when you looked at the system, the
9 system showed that it successfully recorded two audio files
10 on December 19, 2015; is that right?

11 A. Yes.

12 Q. The first was approximately 11 minutes. The second was
13 approximately 29 minutes. Is that right?

14 A. That's correct.

15 MR. DWYER: Nothing further, Your Honor.

16 CROSS EXAMINATION

17 BY MR. BASIL:

18 Q. Mr. King, with respect to the consensual recording
19 system, what information does it say about who logs on to it
20 to download files?

21 A. Could you rephrase the question?

22 Q. Sure. What information is saved in the system about who
23 actually logs on to download a file?

24 A. That information is not saved in the system.

25 Q. Okay. How about just log-ons to the system at all at a

1 local FBI field office? Any information saved on that?

2 **A.** No.

3 **Q.** How about deletions of files from the system? Any
4 information saved on that?

5 **A.** No.

6 **Q.** Are there any user files saved as part of the consensual
7 system?

8 **A.** No.

9 **Q.** Based on the records available to you, can you determine
10 whether anyone downloaded the calls from the December 19,
11 2015, calls that Mr. Dwyer was just asking you about from the
12 terminal in Boston?

13 **A.** I'm unable to determine that.

14 **Q.** If those calls had not been downloaded, what would your
15 expectation be about how long they would persist on the
16 Boston terminal?

17 **A.** My expectation is that the calls would persist
18 indefinitely until downloaded.

19 **Q.** Earlier Mr. Dwyer asked you about something called
20 consensual T-III?

21 **A.** Yes.

22 **Q.** Consensual T-III, does that involve a system called Voice
23 Box?

24 **A.** Yes.

25 **Q.** How long do audio recordings exist on the T-III system

1 for consensual calls?

2 **A.** Indefinitely.

3 **Q.** Special agent, are you aware of any facts about what
4 actually happened to the terminal for the consensual
5 recording system from 2015 from the Boston field office?

6 **A.** I am aware that it was replaced in June of 2017.

7 **Q.** Why was it replaced, sir?

8 **A.** It was malfunctioning.

9 **Q.** What kind of a malfunction would cause the entire
10 terminal to be replaced?

11 **A.** If the hard drive was inoperable or there was some type
12 of mother board failure, it would warrant the replacement of
13 the computer.

14 **Q.** If the hard drive on a terminal failed, would that
15 involve loss of files saved on that hard drive?

16 **A.** Yes.

17 **Q.** Are you aware of any hard drive ever failing on any FBI
18 field office terminal?

19 **A.** Yes.

20 **Q.** Okay. So are you aware as a result of that files being
21 not recoverable from an FBI field office terminal?

22 **A.** Yes.

23 **Q.** So before when Mr. Dwyer had you say or elicited an
24 answer from you that no call had ever been lost before, is it
25 fair to say that hard drives containing calls, in fact, have

1 failed previously?

2 **A.** Yes.

3 **Q.** And you are aware of that?

4 **A.** Yes, I am.

5 **Q.** Do you have any way of knowing whether the terminal in
6 the FBI field office was actually functioning correctly on
7 December 19, 2015?

8 **A.** No. The only thing that I have is the entry from the
9 database stating that the call had been recorded and
10 transferred to the terminal.

11 **Q.** Now, with respect to the back ups on the system in 2015
12 at Quantico, how, if at all, did Quantico tell field agents
13 about that particular policy?

14 **A.** We explain the policy to our technical personnel in the
15 field, and it's their responsibility to educate their
16 customer base.

17 **Q.** But as far as Quantico goes, there was no information
18 provided to investigating agents about how long these back
19 ups might or might not exist?

20 **A.** No.

21 **Q.** Now, you mentioned the engineer who -- you mentioned that
22 the files are deleted at some point to save space or were at
23 least back then?

24 **A.** Yes.

25 **Q.** Who did that?

1 **A.** That would be the program engineer.

2 **Q.** Does the program engineer do that with any reference to a
3 specific case?

4 **A.** No.

5 **Q.** With respect to these particular calls that Mr. Dwyer was
6 asking about, is there anything in the system that can tell
7 you how long after the 30-day mark those calls were actually
8 deleted from the system at Quantico?

9 **A.** No.

10 **Q.** Are you able to tell us anything about when those files
11 were actually lost from the Quantico server?

12 **A.** I'm unable to do so.

13 **Q.** Did anyone in this case ask you to delete files relating
14 to the case?

15 **A.** No.

16 **Q.** Special Agent, do you recall that before you signed your
17 affidavit in this case, you and I spoke on the telephone?

18 **A.** Yes.

19 **Q.** And in the course of that conversation you told me
20 information; is that correct?

21 **A.** Yes.

22 **Q.** Do you recall that I asked you whether an email
23 notification system had been set up for this account that
24 we're talking about?

25 **A.** I do not recall.

1 **Q.** Okay. Could that have happened?

2 **A.** Yes.

3 MR. BASIL: No further questions.

4 MR. DWYER: Very briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. DWYER:

7 **Q.** With regards to the Boston malfunction, do you know what
8 happened?

9 **A.** I do not know what happened.

10 **Q.** So it could be a mother board. It could be a hard drive.
11 You don't know?

12 **A.** I do not know.

13 **Q.** I thought I heard, but I want to clarify, if somebody
14 deletes something off of the Boston system, there would be no
15 record of it?

16 **A.** The only way to delete a call off of the system would be
17 to download and burn it.

18 **Q.** What does that mean?

19 **A.** It means to transfer the call to a compact disk. That
20 process will remove the call from the computer.

21 **Q.** And that's the standard process that's supposed to
22 happen, right?

23 **A.** Correct.

24 **Q.** So the standard process is that you're supposed to
25 download it onto a disk, and then you're supposed to submit

1 it as evidence, right?

2 **A.** If it has been downloaded, yes.

3 **Q.** Okay. So when you were talking before about these
4 malfunctions that have happened in other places and all that
5 other stuff, you've never had a situation where it wasn't
6 downloaded and not submitted into evidence and where they
7 were hunting around to see what happened to the evidence,
8 right?

9 **A.** Correct.

10 **Q.** Okay.

11 MR. DWYER: Nothing further, Your Honor.

12 RECROSS EXAMINATION

13 BY MR. BASIL:

14 **Q.** You were asked the question about the standard practice
15 for downloading calls?

16 **A.** Yes.

17 **Q.** What is the standard practice throughout all FBI offices
18 everywhere about when in the course of an investigation calls
19 should be downloaded off of the consensual monitoring system?

20 **A.** There is no specific policy about when calls are supposed
21 to be downloaded. It's just that when they are downloaded,
22 they are to be submitted into evidence.

23 **Q.** Okay.

24 MR. BASIL: No further questions.

25 THE COURT: You're free to go.

1 THE WITNESS: Thank you.

2 MR. DWYER: Your Honor, a little bit of
3 housekeeping before we call the next witness.

4 THE COURT: Yes.

5 MR. DWYER: I used some exhibits previously with
6 Mr. Anderson. It's Exhibit 1, 2, 2T, 3, 4, and 5. I'd like
7 to make sure that those do get admitted.

8 THE COURT: Give me the numbers again.

9 MR. DWYER: 1, 2, 2T, 3, 4, and 5. I identified
10 all of those. 2T I believe Your Honor sustained the
11 objection to. So I don't believe those are actually in
12 evidence.

13 THE COURT: That was the transcript?

14 MR. DWYER: That's correct, Your Honor.

15 THE COURT: 1 I have in my hand. 2, 3, 4 and 5 are
16 the tapes?

17 MR. DWYER: 9 clips.

18 THE COURT: Do you have any objection to these?

19 MR. BASIL: We have objection to the transcript.
20 He gave me a copy of it on a little thumb drive like he has
21 there a few minutes ago. I haven't had a chance to look at
22 it.

23 THE COURT: It's not admitted. I didn't admit the
24 transcript.

25 MR. BASIL: As to the others, no, Your Honor.

1 THE COURT: Exhibit 1 has already been admitted, I
2 think. He's just now admitted clips of the tapes that he
3 played. He's identified 2-T for the record but concedes that
4 it was not admitted, and it's not admitted.

5 MR. DWYER: Very well. Your Honor, I have copies
6 each of those exhibits for the Court on a thumb drive.

7 THE COURT: Give it to Karen.

8 (Defendant Exhibit Nos. 2 to 5 admitted.)

9 MR. DWYER: Your Honor, at this time we'd like to
10 call Special Agent Garrett Trombly.

11 THE CLERK: Can you please raise your right hand.

12 (SPECIAL AGENT GARETT TROMBLY duly sworn by the
13 Deputy Clerk.)

14 THE CLERK: Could you please state your name and
15 spell your last name for the record.

16 THE WITNESS: My name is Garrett Trombly. The last
17 name is T-R-O-M-B-L-Y.

18 DIRECT EXAMINATION

19 BY MR. DWYER:

20 Q. Good afternoon, Special Agent.

21 A. Good afternoon, counselor.

22 Q. When did you start with the FBI?

23 A. 2011.

24 Q. And did you have any previous law enforcement experience?

25 A. I did not.

1 Q. Was the Boston field office your first assignment?

2 A. No, it was not.

3 Q. What was your first assignment?

4 A. I was assigned to the office in Norfolk, Virginia.

5 Q. How long were you in Norfolk?

6 A. Until August 2015.

7 Q. Okay. And is that when you came up to Boston?

8 A. It is.

9 Q. Did you work any undercovers in Norfolk?

10 A. Not as an undercover.

11 Q. Did you work them as a case agent?

12 A. Not as the primary case agent, but I assisted.

13 Q. Did you work them as a co-case agent?

14 A. I assisted on investigations involving undercovers.

15 Q. Okay. In Norfolk did they use the same consensual
16 monitoring system that we just heard about from Mr. King?

17 A. Yes. It was available.

18 Q. Did you download the recordings down there?

19 A. On some investigations I did.

20 Q. You did. So you're aware of how the system worked?

21 A. I was.

22 Q. When you arrived in the Boston field office, did you
23 receive training with regards to the collection of electronic
24 evidence?

25 A. When I arrived in Boston, no.

1 **Q.** Did you receive any training from the Boston individual
2 assigned to do the collection of ELSUR, the ETO, or whatever
3 it was Mr. King referred to?

4 **A.** EOT. No, I did not.

5 **Q.** EOT. Okay. So no, no training?

6 **A.** No.

7 **Q.** But you already knew how to use the consensual system,
8 correct?

9 **A.** I had used it previously.

10 **Q.** You had downloaded previously, correct?

11 **A.** I had.

12 **Q.** When you came to Boston, were you assigned to the Joseph
13 Baptiste investigation?

14 **A.** I was. I was assigned to an investigation that involved
15 Joseph Baptiste.

16 **Q.** Okay. That was approximately August 2015?

17 **A.** Roughly.

18 **Q.** Who was the case agent at that time?

19 **A.** Lead investigator was Special Agent Vincent Chambers.

20 **Q.** Okay. And you were the co-case agent?

21 **A.** Yes.

22 **Q.** Were you briefed on the investigation?

23 **A.** Yes.

24 **Q.** And by whom?

25 **A.** Mainly Vince.

1 Q. That's Special Agent Chambers?

2 A. Sorry. Yes.

3 Q. And how much time did you spend together talking about
4 the case and how the evidence had been collected and so forth
5 and so on?

6 A. I couldn't quantify it.

7 Q. When did you learn that it was a group one investigation?

8 A. Right away more or less.

9 Q. Was it your first group one?

10 A. That I don't recall.

11 Q. There's a difference between a group one and other
12 undercover investigations, correct?

13 A. Technically there are differences.

14 Q. What are those technical differences?

15 A. I'd rather not disclose the differences, but the
16 functional differences from the case investigator point of
17 view are not particularly critical.

18 Q. You have to get a much higher level of approval, correct?

19 A. The approval levels are distinct.

20 Q. With a group one it's elevated to a higher level of
21 approval, correct?

22 A. Higher is fair.

23 Q. And there is quarterly reports, annual reports that have
24 to be generated, correct?

25 A. There's periodic reporting.

1 Q. Were you part of that periodic reporting?

2 A. I was aware of the periodic reporting.

3 Q. Did you review it?

4 A. Yes.

5 Q. And in that periodic reporting they would talk about the
6 types of undercover that they were doing and the recording
7 and so forth, correct?

8 A. Generally, yes.

9 Q. When did you first meet the undercovers assigned to this
10 case?

11 A. I don't recall specifically, but it would have been -- I
12 don't recall specifically actually.

13 Q. Okay. And also in connection with this case was there a
14 Title III wiretap?

15 A. There was.

16 Q. Was that wiretap of Mr. Baptiste's telephone?

17 A. Yes.

18 Q. Was that monitored here in the Boston field office?

19 A. It was.

20 Q. Was every call captured on that wiretap?

21 A. I'm not sure I understand the question.

22 Q. Every call that was made from Mr. Baptiste's telephone,
23 was it captured?

24 A. I can't speak to that. I know that the Voice Box system
25 preserves the evidence that we're passed from the telephone

1 provider.

2 **Q.** So you haven't looked to see if there were any calls that
3 were missed?

4 **A.** I am currently aware of calls that appear in the call log
5 of Baptiste's phone that do not appear in the Title III
6 intercept log.

7 **Q.** So telephone calls were made or received on
8 Mr. Baptiste's telephone but do not appear in the wiretap; is
9 that correct?

10 **A.** All I can say is there's a discrepancy between the logs.

11 **Q.** Okay. So the logs on the phone don't match the Title III
12 wiretap logs?

13 **A.** True.

14 **Q.** Which one would you rely on?

15 **A.** Rely in what way?

16 **Q.** Which one would you say is the one that you measure the
17 others against?

18 **A.** I don't measure either against the other.

19 **Q.** Okay. They're just missing some calls, and you haven't
20 attempted to identify why they might be missing?

21 **A.** I'm generally aware of potential explanations for
22 sessions that might not have been perfectly captured by the
23 technology available to the FBI.

24 **Q.** Okay. Let's switch now to the undercovers and the
25 consensual wiretap or consensual system that was being used.

1 Okay?

2 The approval for the use of that, do you know how
3 that approval was arrived at, who gave that approval?

4 **A.** No.

5 **Q.** You understand that in this case there's two telephone
6 calls that were made to Mr. Boncy that are missing, correct?

7 **A.** I do understand.

8 **Q.** When did you first learn that the evidence of those calls
9 had not been collected?

10 **A.** October 2018.

11 **Q.** October 2018?

12 **A.** October 2018.

13 **Q.** Before or after Mr. Boncy was indicted?

14 **A.** Before.

15 **Q.** So you knew before he was indicted that these calls had
16 been lost?

17 **A.** I was aware before he was indicted that the calls were no
18 longer available at Quantico.

19 **Q.** Where are they available?

20 **A.** My present understanding is that they are not available
21 anywhere.

22 **Q.** They're gone.

23 **A.** That's not a question.

24 **Q.** Are they gone?

25 **A.** They are currently unavailable to the best of my

1 knowledge.

2 **Q.** What does that mean? Could I go and get them somewhere?

3 **A.** The government is unable to produce --

4 **Q.** You don't want to say lost. You don't want to say
5 destroyed. But unavailable indicates that they might some
6 day be available. Will they some day be available?

7 **A.** Not that I know of. The government isn't able to produce
8 them for the purposes of this trial.

9 **Q.** Are they somewhere?

10 **A.** Not that I know of.

11 **Q.** So are they lost?

12 **A.** I am unable to produce them for the purpose of this
13 trial.

14 **Q.** Okay. If we were to push the trial three months, could
15 you produce them?

16 **A.** Not that I know of.

17 **Q.** So when these calls were made, did you have a briefing
18 with the undercover before they were made?

19 **A.** I don't recall specifically.

20 **Q.** You don't recall specifically. Was it your practice to?

21 **A.** My general practice was to discuss with undercovers in
22 advance of calls to be made with subjects.

23 **Q.** Did you make notes of those conversations?

24 **A.** No.

25 **Q.** Okay. Why not?

1 **A.** It's not my practice. The electronic record, the
2 recording of the conversation is the best evidence and speaks
3 for itself.

4 **Q.** Okay. But we don't have that, right?

5 **A.** Not as to those calls.

6 **Q.** Okay. Did you have a conversation afterwards with the
7 undercover about what had happened on that telephone call?

8 **A.** I have no specific recollection of such conversation.

9 **Q.** Was it your customary practice to do so?

10 **A.** It was.

11 **Q.** So do you have any reason to believe that you did not?

12 **A.** No, I do not.

13 **Q.** Would he normally relay to you the contents of that
14 telephone call?

15 **A.** He would relay to me a summary of the conversation, yes.

16 **Q.** And based on that summary, would you make certain
17 investigative decisions as to what to do next?

18 **A.** Each subject contact would be taken in the context of the
19 entire investigation and would factor into next steps.

20 **Q.** And did you make some decisions on what to do with
21 regards to next steps?

22 **A.** In the context of those calls?

23 **Q.** Yes.

24 **A.** Not that I recall specifically.

25 **Q.** Did the undercover make a phone call the next day to

1 Mr. Baptiste?

2 **A.** Yes, he did.

3 **Q.** And as customary with your practice, did you speak to the
4 undercover before that telephone call was made?

5 **A.** Again I don't have a specific recollection of that, but
6 it was my practice.

7 **Q.** And did you speak to him afterwards?

8 **A.** Again I don't have a specific recollection, but it was my
9 practice.

10 **Q.** And with regards to that telephone call, which we've
11 heard portions of in this case, the December 20, 2015,
12 telephone call between Mr. Baptiste and the undercover, there
13 was a discussion about the telephone calls that were had with
14 Mr. Boncy, correct?

15 **A.** Peter represented something that -- made a representation
16 about what Boncy had said on the previous call.

17 **Q.** Had you and the undercover planned the representation?

18 **A.** Not that I recall.

19 **Q.** Okay. So would it have generally been part of your plan
20 with regards to the upcoming call with Mr. Baptiste?

21 **A.** I can't make a general statement about a specific like
22 that.

23 **Q.** What do you remember the undercover telling you about the
24 telephone calls he had with Mr. Boncy?

25 **A.** Nothing whatsoever.

1 Q. Nothing at all?

2 A. No.

3 Q. No recollection whatsoever?

4 A. None.

5 Q. And you certainly didn't put that in the report, correct?

6 A. No.

7 Q. Meaning the conversation that you had. Because the best
8 evidence is the recording, right?

9 A. Correct.

10 Q. When that December 19, 2015, telephone call was made,
11 were you on leave, in the office? Where were you? Do you
12 know?

13 A. I don't recall.

14 Q. With regards to the case, December 19, 2015, who was the
15 case agent?

16 A. On that day I was.

17 Q. Who's responsible to secure all of the evidence in the
18 investigation to make sure it's properly secured?

19 A. The responsibility was mine.

20 Q. That's yours. Did you do it with those two December 19,
21 2015, calls?

22 A. My understanding at the time was that the calls were
23 preserved on the auxiliary system.

24 Q. Your understanding was that they were preserved on the
25 auxiliary system?

1 **A.** The consensual recording system.

2 **Q.** Where? Quantico or Boston?

3 **A.** Quantico.

4 **Q.** And what was that based on?

5 **A.** My investigative experience to date.

6 **Q.** But you downloaded them in Norfolk, correct?

7 **A.** At times, yeah.

8 **Q.** All right. Why did you think they would be backed up at
9 Quantico?

10 **A.** That was my understanding of all telephone intercept
11 technology that the FBI had.

12 **Q.** Who gave you that understanding?

13 **A.** I don't recall the individual. That was the
14 understanding I had with respect to Voice Box.

15 **Q.** Why would you download them?

16 **A.** Because you can't deliver for purposes of discovery,
17 among other reasons, a computer server that's in Quantico.

18 **Q.** Okay. But that's the only reason you do it, discovery?
19 Aren't you required to download it and put it into ELSUR?

20 **A.** Eventually. But ELSUR is a safekeeping methodology.
21 That's my understanding of the reason for ELSUR, the ELSUR
22 closet.

23 **Q.** Do you think the evidence of those telephone calls was
24 properly maintained, meaning the December 19, 2015, calls?

25 **A.** I think all investigative activity in this case conformed

1 to proper standards.

2 **Q.** That's not my question. My question is the evidence of
3 the telephone calls, was it properly maintained by the FBI?

4 **A.** I think it was maintained to the good faith understanding
5 of all individuals involved.

6 **Q.** So it's acceptable?

7 **A.** That's not my decision to make.

8 **Q.** Was the evidence in this case properly maintained? It's
9 a simple question. You think it was? Yes or no. Who are
10 you --

11 **A.** They're -- the way I take the word "proper" is as a
12 measure of intention, and therefore I answer yes. There was
13 no bad faith. There was no intentional misdeed or anything
14 of that nature with respect to the preservation of all
15 evidence in this case.

16 **Q.** But you don't have it, right?

17 **A.** I do not.

18 **Q.** Right. It's lost?

19 **A.** That's your word.

20 **Q.** It's not here?

21 **A.** That's true.

22 **Q.** And in your mind that's proper?

23 **A.** That's not what I said.

24 **Q.** You said it's proper? Yes or no.

25 MR. BASIL: Your Honor, asked and answered at this

1 point.

2 THE COURT: He can have that. Let's move it along,
3 okay? It's late.

4 BY MR. DWYER:

5 Q. Is it proper? Yes or no.

6 A. The evidence handling in this case was proper.

7 Q. Okay. Did you listen to that December 19, 2015, call?

8 A. Never.

9 Q. Did anyone?

10 A. Not that I know of.

11 Q. Did you listen to any calls in this case?

12 A. Many.

13 Q. Did you listen to any calls on the consensual monitoring
14 in this case?

15 A. No.

16 Q. Why not?

17 A. For the active investigative period of this case, I did
18 not have access to the Peter account in that system.

19 Q. So because you didn't have access, you never listened?

20 A. The majority of calls, my understanding at the time was
21 that the majority of the calls on that system were also
22 collected via Voice Box on the T-III.

23 Q. The majority of the calls on that line were corrupted?
24 Is that what you said?

25 A. That's not what I said.

1 **Q.** Can you repeat that? I missed it.

2 THE COURT: He said collected.

3 MR. DWYER: Oh. The majority were collected.

4 **A.** My understanding is that the system was being used as a
5 back up to the T-III. And I listened to the calls there.

6 MR. DWYER: Your Honor, if I could have one moment.

7 BY MR. DWYER:

8 **Q.** I just want to clarify. Did you think that these
9 consensuals were getting backed up in Quantico or in Boston?

10 **A.** My understanding of the system at the time was that
11 collection took place on some system in Quantico, and there
12 they remained until and unless they were burned to disk in
13 Boston.

14 **Q.** Okay. But they weren't backed up on the Title III from
15 Mr. Baptiste's telephone. The consensual and Title III are
16 entirely different?

17 **A.** I don't consider the consensual and Title III the same
18 thing.

19 **Q.** But the consensual is a separate system from the Title
20 III?

21 **A.** That's correct.

22 **Q.** Okay.

23 MR. DWYER: Nothing further, Your Honor.

24 CROSS EXAMINATION

25 BY MR. BASIL:

1 **Q.** Special Agent, a few moments ago Special Agent King was
2 on the stand. Do you remember that?

3 **A.** Yes.

4 **Q.** He testified about something called EOT, right?

5 **A.** Yes.

6 **Q.** When in your experience has an EOT ever communicated the
7 receipt of data to the a case agent?

8 **A.** Never to my knowledge.

9 **Q.** In this case do you recall what kinds of emails were sent
10 by the consensual recording system to case personnel?

11 **A.** I became aware of emails that were sent to Special Agent
12 Chambers reminding him of the existence of the account
13 generally, not with respect to any particular item or
14 recording in the account.

15 **Q.** You mentioned that you found out about these two calls in
16 October of 2018; is that right?

17 **A.** That's correct.

18 **Q.** How did you find out?

19 **A.** During a telephone conversation with you.

20 **Q.** Okay. And after I called you about that, what did you
21 do?

22 **A.** After I called, at my first opportunity I went into the
23 office and checked the system to see if there were any such
24 calls.

25 **Q.** Why did you go to the system to see if they were there?

1 **A.** Because that's where I expected to find them.

2 **Q.** Why would you expect that calls recorded in 2015 would be
3 on a computer system in 2018?

4 **A.** Because that was my investigative experience to that
5 point and my understanding of the system.

6 **Q.** So you're saying that you actually thought that something
7 recorded on a computer three years earlier would continue to
8 exist on a computer?

9 **A.** Yes.

10 **Q.** When did you find out that calls on the Quantico system
11 could potentially be wiped after 30 days?

12 **A.** Some time in either October or November of 2018.

13 **Q.** What's the retention period on the Title III system?

14 **A.** My understanding is that it's indefinite.

15 **Q.** If you needed to get a call off a Title III system that
16 had been made back in 2015, could you get it today?

17 **A.** Yes.

18 **Q.** After Special Agent Chambers left the case, what did you
19 need to do to get authority to make a download?

20 **A.** I would have had to go to the tech squad, the personnel
21 that administered the system and request an authority change.

22 **Q.** Why didn't you do that?

23 **A.** I didn't feel the need to at the time. We were
24 collecting the bulk of the evidence on the T-III system.

25 **Q.** With respect to the files from the 2015 Boston terminal

1 from the auxiliary system, what steps have you taken to try
2 to get those files?

3 **A.** When I first logged in, I attempted to download them.
4 And when that failed, I went to the local personnel who
5 administer the local version of the system and asked for
6 help. My understanding is that they communicated down to
7 Quantico to have them check if the files were available on
8 their servers. When we got that negative answer, over an
9 ensuing time, I'm not sure precisely when, I learned that, in
10 fact, as supervising Special Agent King testified, a local
11 copy was delivered to the local machine, which we then tried
12 to examine for the calls. That was negative.

13 But then we found out that the machine in place in
14 2018 was not the same one that was in 2015. So we set about
15 trying to find that machine, which we did. It was shipped
16 back to us from Quantico where it was -- a computer
17 specialist in Boston examined it for all audio files and gave
18 me a disk of those. I reviewed every one of them, and there
19 was no fragment or complete record of anything pertaining to
20 this or any other investigation.

21 **Q.** Special Agent, did you destroy those calls?

22 **A.** I did not.

23 **Q.** Did you direct anyone to destroy those calls?

24 **A.** No.

25 **Q.** Did you seek to leave them on a system with the

1 expectation that a computer hard drive would fail some time
2 in 2017?

3 **A.** Absolutely not.

4 **Q.** Let me ask you some questions about the content of the
5 call and the context for the calls that we're talking about.
6 Okay?

7 MR. BASIL: If I could have one second, Your Honor.
8 Thank you. I'll see if I can get my speakers to play onto
9 your system.

10 BY MR. BASIL:

11 **Q.** Special Agent, do you recall earlier today, Mr. Dwyer
12 asked the question -- you were here for the testimony earlier
13 today of Undercover Peter; is that correct?

14 **A.** I was.

15 **Q.** Mr. Dwyer asked a question of whether Mr. Boncy was
16 actually in the room when something called pay-to-play was
17 discussed.

18 **A.** Yes.

19 **Q.** Are you aware of whether Mr. Boncy was in the room when
20 pay-to-play was discussed?

21 **A.** I am aware.

22 MR. BASIL: Your Honor, I'd like to play what's
23 been marked as trial Exhibit 1909. It's previously been
24 delivered to the defendants. I am going to play the audio.
25 This is a video clip.

1 (Video played.)

2 BY MR. BASIL:

3 **Q.** Okay. Let's just for the record do as best as we can
4 with what we played in. It will be submitted to the Court at
5 trial, so we'll have that.

6 Special Agent, have you reviewed that section of
7 the video?

8 **A.** I have.

9 **Q.** Who was actually in the room at the time the video
10 played?

11 **A.** The defendants Baptiste and Boncy, Jean Frederic Sales
12 and the undercovers Peter and Nello.

13 **Q.** Relative to Undercover Peter, where was Mr. Baptiste?

14 **A.** Across the table.

15 **Q.** About how far?

16 **A.** Three, four feet.

17 **Q.** And where was Mr. Boncy relative to Mr. Baptiste?

18 **A.** Sitting right next to him.

19 MR. BASIL: May I approach the witness for a
20 moment?

21 THE COURT: Yes.

22 BY MR. BASIL:

23 **Q.** Special Agent, was he as close as I am to you right now?

24 **A.** Roughly, yes.

25 **Q.** Okay. And where was Mr. Sales?

1 **A.** Sitting next to Mr. Boncy.

2 **Q.** Let the record reflect that I stood about two feet from
3 Special Agent Trombly. In the clip that we listened to,
4 Anderson says in response to a question from Sales -- Sales
5 asks if you have a checklist of things that you're worried
6 about. Anderson says with Boncy sitting there, Well, I mean
7 we're starting to go down it, but really it's just -- it's
8 the general expenses. You know what I mean by that?
9 Pay-to-play expenses when we're developing in Haiti. This is
10 an area we're unfamiliar with.

11 Do you recall that?

12 **A.** I do.

13 **Q.** Having reviewed the video, what was Mr. Boncy's response
14 to pay-to-play being spoken that way?

15 **A.** Didn't react in any way.

16 **Q.** And Peter goes on later in that clip, he says, because
17 again like I -- like we said the person on the ground doesn't
18 care about letters from prime ministers. And Baptiste
19 responds no, right?

20 **A.** Correct.

21 **Q.** And Anderson continues a little further on and says at
22 the end, That doesn't pay the rent, right?

23 **A.** Correct.

24 **Q.** He says at the end, It won't buy girlfriends nice dresses
25 and things, right?

1 **A.** Correct.

2 **Q.** Based on your training and experience as an FBI agent,
3 what is the purpose of making such a statement in an
4 undercover meeting?

5 **A.** It's to establish uniformity of understanding of the
6 subject of discussion.

7 **Q.** Mr. Baptiste then states, "A smart business always sets
8 aside to make sure that we take care of this kind of
9 problem."

10 Do you recall that?

11 **A.** I do.

12 **Q.** And Anderson said, So it was 5 percent. And Baptiste
13 responded, 5 percent, right?

14 **A.** Yes.

15 **Q.** And someone said yes, right?

16 **A.** Correct.

17 **Q.** And Mr. Sales says unforeseen; is that right?

18 **A.** Yes.

19 **Q.** And Baptiste clarifies unforeseen expenses, right?

20 **A.** Yes.

21 **Q.** And then an undercover agent says, it's already built in
22 the proposal?

23 **A.** Yes.

24 **Q.** And Mr. Baptiste answers yes; is that correct?

25 **A.** Correct.

1 Q. What was Mr. Boncy's response to that exchange on the
2 video?

3 A. He nodded his head.

4 Q. Nodded his head in what manner?

5 A. Affirming his consent or agreement.

6 Q. Was he shaking his head to indicate no?

7 A. No. He was nodding it up and down like yes.

8 Q. Earlier today Mr. Dwyer played a segment of an audio tape
9 of a call between Mr. Baptiste and Undercover Peter on the
10 20th; is that right?

11 A. Yes.

12 Q. Let me play a segment of that for you. For the record
13 this is trial Exhibit 73 that has been previously provided to
14 counsel. This is session 3383 from the wire. I'm going to
15 start it playing at minute 15 and 25 seconds.

16 (Audio played.)

17 BY MR. BASIL:

18 Q. Special Agent, have you reviewed that call previously?

19 A. I have.

20 Q. Based on your training and experience in the FCPA, what
21 is the reference to U.S. laws in that exchange?

22 A. It's a reference to the FCPA.

23 Q. And what was Mr. Baptiste's explanation for Mr. Boncy's
24 way of talking about this issue?

25 A. That he was trying to insulate himself and be careful.

1 Q. I'd like to ask you again about the context for the calls
2 we've been talking about on the 19th, if that's okay with
3 you.

4 A. Sure.

5 Q. I provided to defense counsel a copy of the exhibits
6 previously filed for the Court. I also have a courtesy copy
7 for the Court, and I will approach.

8 MR. BASIL: Ms. Folan, for you. Your Honor, may I
9 please give a copy to the witness as well?

10 THE COURT: Sure.

11 MR. BASIL: To help the court reporter, I'll speak
12 as close to the microphone as I possibly can. Usually I
13 speak fairly loud, so when people in court tell me they can't
14 hear me, I'm surprised.

15 BY MR. BASIL:

16 Q. So Special Agent, let me start out by asking you the
17 question. Let me direct you to the day of December 16, 2015.
18 Okay? Yes?

19 A. Yes.

20 Q. Where were you on December 16, 2015?

21 A. I was in New York City.

22 Q. Why were you in New York City that day?

23 A. We had planned to interview Baptiste that day.

24 Q. When you say interview Baptiste that day, were you
25 referring to an undercover meet with Baptiste?

1 **A.** No. Something separate from that.

2 **Q.** Okay. What would that have been?

3 **A.** That would have been Special Agent Allison Pauly and I
4 overtly approaching Baptiste as FBI agents and interviewing
5 him.

6 **Q.** I'm sorry. Did you answer completely? I cut you off.

7 At what point in an investigation do you make an
8 approach like this on a person who is under investigation?

9 **A.** When we've made the determination that we have sufficient
10 evidence to charge the individual if the interview doesn't go
11 well.

12 **Q.** Did that approach on Mr. Baptiste actually happen that
13 day?

14 **A.** It did not.

15 **Q.** Why not?

16 **A.** Baptiste brought his wife to New York City and that
17 confounded the timetable for the approach and our ability to
18 have a confidential interview with him.

19 **Q.** Broadly speaking, what evidence were you aware of conduct
20 to be sufficient to charge an individual -- what evidence
21 like that were you aware of with respect to Mr. Baptiste and
22 Mr. Boncy as of December 16, 2015?

23 **A.** Well, we had multiple conversations between Baptiste and
24 Boncy regarding bribery of Haitian government officials to
25 include the wire intercepts during which Baptiste called

1 Boncy and asked permission and agreement to offer a job on
2 the port project to Axan Abellard in exchange for his support
3 and getting the letter from the Prime Minister's office.

4 They had also discussed on separate calls bringing
5 the Prime Minister onto the port project once he left office
6 in exchange for his support while Prime Minister. And they
7 had discussed on the telephone the use of NOAH as a
8 concealment device and conduit to funnel money down to Haiti
9 for payment to Haitian government officials.

10 **Q.** And how much of the project was discussed as a source of
11 bribes?

12 **A.** A rough quantification was 5 percent.

13 **Q.** If I could have you look in the packet of documents in
14 front of you at what was previously submitted to the Court as
15 Exhibit 133 or document 133-1 on the docket. And I'll have
16 you look at page 29 of 117, if you could.

17 **A.** I'm there.

18 **Q.** Special Agent, what is this document?

19 **A.** It's a transcript of a call that we intercepted on the
20 wire.

21 **Q.** What is the date of the call?

22 **A.** November 25, 2015.

23 **Q.** Okay. Let me refer you to line 6, if I could. Do you
24 see Baptiste says there, I already spoke to Axan for the
25 letter.

1 Do you see that?

2 **A.** I do.

3 **Q.** Boncy responds yes. Do you see that?

4 **A.** I do.

5 **Q.** Baptiste says, Can I tell him if he gives us, if he also
6 gives us something for the Mole, I will give him something.

7 Do you see that?

8 **A.** I do.

9 **Q.** What is the Mole there?

10 **A.** Mole is short for Mole St. Nicolas which was the
11 geographical site of the port project.

12 **Q.** Boncy responds, Yes, yes, naturally, finally. Do you see
13 that?

14 **A.** I do.

15 **Q.** And then Baptiste says, No, I am telling you, I am
16 telling you. And Boncy responds, Do not, do not write it, do
17 not write it.

18 Do you see that?

19 **A.** I do.

20 **Q.** Special Agent, what is this exchange?

21 MR. DWYER: Objection, Your Honor.

22 THE COURT: Sustained.

23 BY MR. BASIL:

24 **Q.** Special Agent, what is the relationship between the
25 interaction here and 5 percent social funding in the contract

1 for the port project?

2 MR. DWYER: Objection, Your Honor.

3 THE COURT: I don't understand the question. You
4 need to lay a better foundation.

5 BY MR. BASIL:

6 Q. Do you recall earlier today Mr. Dwyer characterized 5
7 percent for social funding as being the central feature of
8 the government's case?

9 A. I recall that, yes.

10 Q. Okay. And when I asked you a few moments ago about what
11 criminal conduct you were aware of by December 16, you
12 mentioned an exchange about Axan Abellard; is that correct?

13 A. I did.

14 Q. Is that this exchange?

15 A. It is.

16 Q. What's the relationship between this exchange and the 5
17 percent for social funding, as Mr. Dwyer referred to earlier,
18 as being the central part of the case?

19 MR. DWYER: Same objection.

20 THE COURT: Foundation about the relationship
21 between --

22 BY MR. BASIL:

23 Q. Sure. Special Agent, is this part of the 5 percent for
24 social funding?

25 A. No, it's not.

1 Q. Let's go on to page 32 of 117, please.

2 A. I'm there.

3 MR. BASIL: Your Honor, to speed things along, may
4 I lead on at least identification of documents?

5 MR. DWYER: No objection, Your Honor.

6 THE COURT: Mr. Dwyer is not objecting.

7 MR. BASIL: Thank you.

8 BY MR. BASIL:

9 Q. Special Agent, is this also a wire intercept?

10 A. Yes.

11 Q. Is this a wire intercept dated the same day as the prior
12 call we just reviewed?

13 A. Yes.

14 Q. Is this a call between persons believed to be Axan
15 Abellard and Joseph Baptiste?

16 A. Yes.

17 Q. Let me refer you to line 12, please. Do you see there it
18 says, "Also I have spoken to Richard. He has told me that
19 you are an engineer. If you could approve for the Mole as
20 well, we would make you a part of it. Abellard responds,
21 Yes, thank you, okay.

22 Do you see that?

23 A. Yes.

24 Q. Could I have you go to the next page, 33?

25 A. Yes.

1 **Q.** At line 36 Baptiste says, "I already spoke to him. I
2 told him that you were an engineer. It would be good if you
3 could join us so you could push the project forward. He told
4 me that's not a problem. Abellard responds, No problem.
5 Baptiste responds, Axan, we have serious money for that
6 project. Abellard responds, Okay then, once you tell me so,
7 no problem, chief. And Baptiste then responds, We do have
8 money for that project. I say the same thing to my client.
9 He is going to be my consultant. He says, Right after he is
10 out of the Prime Minister's office, he will join.

11 Do you see that?

12 **A.** I do.

13 **Q.** What was of the significance of this event in your
14 investigation?

15 **A.** This was Baptiste offering a Haitian government official
16 a thing of value in exchange for that government official's
17 use of his office.

18 **Q.** Is this the 5 percent for social funding under the
19 contract?

20 **A.** No.

21 **Q.** Could I have you go forward to page 40 of 117. Okay. Is
22 this also a wire intercept?

23 **A.** Yes.

24 **Q.** Is this a session, call that took place two days later on
25 11/27/2015?

1 **A.** It is.

2 **Q.** Let me refer you to line 19. Baptiste says, Now all of a
3 sudden the lawyers and everybody is on the table. They can
4 see the size of the thing that we're doing and that's what
5 I'm talking about. And there's a response from Boncy that's
6 unintelligible and Baptiste continues, So now I have to go
7 across the table and get everybody something. It's just a
8 matter of getting the last piece to them by Monday. And
9 Boncy responds, Keep, keep Peter warm.

10 Special Agent, where, if anywhere, in this call
11 does Mr. Boncy indicate that Mr. -- does Mr. Boncy indicate
12 that Mr. Baptiste should not --

13 MR. DWYER: Objection, Your Honor.

14 BY MR. BASIL:

15 **Q.** -- go across the table and get everybody something?

16 THE COURT: Basis?

17 MR. DWYER: The call speaks for itself.

18 THE COURT: You can ask him his understanding.

19 BY MR. BASIL:

20 **Q.** Sure. What's your understanding of what just happened
21 there in that portion of the call that I read it?

22 **A.** Baptiste is describing to Boncy the need to continue to
23 make payments to Haitian government officials to move the
24 project along.

25 **Q.** What is your understanding of Mr. Boncy's response?

1 **A.** He never objects.

2 **Q.** What does "keep Peter warm" mean to your understanding?

3 **A.** It meant that Baptiste should keep Peter happy
4 essentially and apprised of developments.

5 **Q.** Is this the 5 percent for social funding?

6 **A.** No.

7 **Q.** Could you go forward to page 49 of 117.

8 **A.** I'm there.

9 **Q.** Have you, in fact, reviewed -- so this is another
10 session, another call, and this is dated December 23, 2015;
11 is that correct?

12 **A.** Yes.

13 **Q.** In session 2022, right?

14 **A.** Correct.

15 **Q.** Have you actually reviewed the audio for this file?

16 **A.** Yes.

17 **Q.** Okay. Were you able to identify the voices on it?

18 **A.** Yes.

19 **Q.** Okay. Do you see down there at lines 8 and 9 it says, RB
20 for 8 and JB for 9. Do you see that?

21 **A.** Yes.

22 **Q.** Based on your review should that, in fact, be reversed
23 that it's JB above and then RB?

24 **A.** Yes.

25 **Q.** Special Agent, let me refer you to line 7 where Mr. Boncy

1 states, It's very important to understand because, laughing,
2 each person wants theirs understand. And Baptiste responds,
3 Pardon me, I know, that's what I know for sure, (laughing),
4 what happens, absolutely each step that takes, each person
5 wants, wants, a piece of. Yes. Absolutely, absolutely. I
6 told him once we have the letter we will take care of
7 everybody. And Boncy responds, Yes, yes, I'll see you.

8 Do you see that?

9 **A.** Yes.

10 **Q.** Is this the 5 percent for social funding?

11 **A.** No.

12 **Q.** Could we please go on to page 55 of 117. Are you there?

13 **A.** I am.

14 **Q.** Is this another call intercepted on the wire?

15 **A.** Yes.

16 **Q.** This was dated 12/12/2015, is that correct?

17 **A.** Correct.

18 **Q.** And session 2682?

19 **A.** Yes.

20 **Q.** This is a call involving Mr. Boncy and Mr. Baptiste?

21 **A.** Correct.

22 **Q.** You're able to recognize their voices on the call?

23 **A.** Yes.

24 **Q.** At line 209 Mr. Baptiste says, We are going -- make sure
25 that everything that we need from the government we have it.

1 Any license, anything we need, we will hire them as
2 consultants to get this license. And Boncy responds, Uh-huh,
3 uh-huh. Baptiste says, You understand? And Boncy responds,
4 Okay. But do not write it. Technically this thing about the
5 Prime Minister, (laughing), do not write it.

6 Do you see that?

7 **A.** I do.

8 **Q.** What is your understanding of what happens there?

9 MR. DWYER: Objection, Your Honor. The agent's
10 understanding I think is irrelevant.

11 THE COURT: I'm happy to have you keep doing this,
12 but I'm not really sure what you're driving at.

13 BY MR. BASIL:

14 **Q.** Is the arrangement here the 5 percent for social funding?

15 **A.** No.

16 **Q.** What significance did this event have to you in your
17 investigation?

18 **A.** This was yet another discussion where Boncy and Baptiste
19 were agreeing on the offer of employment to Haitian
20 government officials in exchange for their support of the
21 port project.

22 **Q.** Based on your training and experience as an FCPA
23 investigator, what's the significance of that?

24 MR. DWYER: Objection, Your Honor.

25 THE COURT: Overruled.

1 **A.** It's a violation of the FCPA.

2 BY MR. BASIL:

3 **Q.** Let me have you look at page --

4 THE COURT: I'm going to strike that testimony
5 because that was a legal conclusion. I thought he was going
6 to say something else. It doesn't matter. It's just me.
7 I'm not going to take that answer.

8 BY MR. BASIL:

9 **Q.** Let me have you look at page 57 of 117, please.

10 **A.** I'm there.

11 THE COURT: So the point that you're trying to make
12 is that the missing callings have to do with the 5 percent,
13 but that even absent those calls there's evidence of criminal
14 activity that was completely separate from it?

15 MR. BASIL: Your Honor, the point here is that by
16 the time of the calls on December 19, all the facts that
17 prove the government's charges as to every element already
18 existed. The suggestion that the 5 percent for social
19 funding was the case as of December 19 is simply untrue, and
20 we'll get to that in just a moment. What actually existed by
21 this time was a complete and perfected conspiracy.

22 THE COURT: I know we're going to hear all this
23 next week, and it's going to go to a jury next week, and it's
24 fine. For my purposes here I don't need to hear every single
25 call where they're talking about something other than the 5

1 percent. I get the gist of it.

2 MR. BASIL: Your Honor, if the Court is prepared at
3 this time to say that the evidence on the 19th was merely
4 potentially useful rather than apparently exculpatory, as the
5 defendant is saying, then I won't go on.

6 THE COURT: They are two different concepts, right?
7 You can go on with this line of questioning for a long time.
8 I'll let you do it if you want. Just because there's other
9 evidence, it doesn't mean that that evidence wasn't
10 exculpatory.

11 MR. BASIL: Your Honor, the crime was complete
12 and --

13 THE COURT: That may be. That may be.

14 MR. BASIL: And the calls that happened on the 19th
15 were pursuant to an agreement between the parties on the
16 18th, which I'm about to get to, that make every statement
17 made on those calls inculpatory statements as overt acts in
18 furtherance of the conspiracy.

19 THE COURT: Okay. But I don't need to find that
20 today. That's what you're going to be --

21 MR. BASIL: Your Honor, from the government's point
22 of view, these calls cannot be apparently exculpatory under
23 the meaning of that term, which means apparently materially
24 exculpatory, because they can be construed easily by the
25 government as being totally consistent as being inculpatory.

1 THE COURT: Okay. Keep going if you want to. I'm
2 not trying to shut you off. I'm just saying I got it. But
3 go ahead.

4 MR. BASIL: I'll move along, Your Honor.

5 BY MR. BASIL:

6 Q. Special Agent, let me have you look at page 57 of 117.

7 A. I'm there.

8 Q. Is this an email sent by Mr. Boncy to Mr. Baptiste on
9 December 18?

10 A. Yes.

11 Q. Is the effect of this email that Mr. Boncy is forwarding
12 something called a draft note to Special Agent Peter?

13 A. Yes.

14 Q. Could I have you look at the next page, please. This is
15 page 58 of 117.

16 A. I'm there.

17 Q. Let me refer you to bullet point number three in the
18 draft note from Mr. Boncy. Do you see that?

19 THE COURT: You've got to slow down. We literally
20 have not left this courtroom since 9:30 this morning. Just
21 slow down for her. She's doing yeoman's work today.

22 MR. BASIL: Yes.

23 BY MR. BASIL:

24 Q. And it states there, Please note that as pointed out
25 earlier that the Satarem's, S-A-T-A-R-E-M, original estimate

1 did not include additional cost such as the ones related to
2 the role you anticipates, with an S, for Joe Baptiste in
3 advocating the process interest with the local authorities.
4 We propose that an additional amount of 5 percent be added to
5 the final estimation of costs.

6 Do you see that?

7 **A.** I do.

8 **Q.** When, if ever, had you heard 5 percent referenced in
9 relation to local authorities in your investigation?

10 **A.** Among other times on November 12, 2015.

11 **Q.** Let me refer you now to page 61 of 117.

12 **A.** I'm there.

13 **Q.** Okay. In the middle email there Mr. Boncy writes, "A
14 possible alternative is to try to include it when we review
15 the updated costs in May. This may be too late for you. The
16 problem we are facing is that we used the bare minimum costs
17 which Satarem used. If we don't mention at all, he will
18 challenge it then. Perhaps you could suggest another way to
19 refer to it."

20 Do you see that?

21 **A.** Yes.

22 **Q.** Mr. Baptiste responds, "I will not be able to wait for
23 May. I need to have the 5 percent on the date of signing of
24 contract. The people who have helped make this contract
25 possible will not wait."

1 Do you see that?

2 **A.** I do.

3 **Q.** Okay. Let's go on to page 71 of 117. Are you there?

4 **A.** I'm there.

5 **Q.** Is this another call intercept on 12/18/2015?

6 **A.** It is.

7 **Q.** Okay. This is between Mr. Baptiste and Mr. Boncy?

8 **A.** Yes.

9 **Q.** Referring you to line 9. Mr. Boncy says, "What I am
10 saying is, I, I, the note raised it from 34 to 39." Let me
11 stop there.

12 Is that million dollars?

13 **A.** Yes.

14 **Q.** Is that okay? Baptiste responds, That's what I'm saying,
15 I don't want to bother him then for that to start. Boncy
16 responds, I know, I know. But the part of the problem is
17 we're a bit stuck because we have -- and Baptiste then
18 responds, skipping a couple of lines, there is always
19 unforeseen expenses that you incur when you start the project
20 in construction mostly. And you tell him, Okay, we need
21 extra 4 to 5 million to unblock something. Boom. Can you
22 provide that? And Boncy responds uh-huh.

23 Do you see that?

24 **A.** Yes.

25 **Q.** Let me have you go forward to page 73 of 117.

1 **A.** Okay.

2 **Q.** At the top Baptiste says, Yeah, keep it at 4. Again is
3 that million?

4 **A.** Yes.

5 **Q.** He says signing after the project has begun we will tell
6 him, my man, we need to increase it by such amount because
7 those are unforeseen that, that arise over there. You need
8 to provide an additional 5 percent.

9 Do you see that?

10 **A.** Yes.

11 **Q.** Down at line 37, do you see Mr. Boncy responds, And I'll
12 exclude, and I'll exclude the 5 percent, as I said to you
13 earlier.

14 Do you see that?

15 **A.** Yes.

16 **Q.** After this date what was your understanding of the
17 agreement between Mr. Baptiste and Mr. Boncy regarding the
18 5 percent?

19 MR. DWYER: Objection.

20 THE COURT: Basis?

21 MR. DWYER: Speculation.

22 THE COURT: His understanding of it.

23 MR. DWYER: Then relevance, Your Honor. His
24 understanding.

25 THE COURT: He can testify about his understanding

1 of it, whatever its marginal relevance might be.

2 MR. DWYER: Understood.

3 **A.** My understanding was that Baptiste and Boncy had reached
4 a new agreement such that they would request an additional 5
5 percent from Peter in SEW Funds after the execution of the
6 contract as a way to mitigate the increasing costs of the
7 project from 84 million to 110 million.

8 BY MR. BASIL:

9 **Q.** Let me have you go forward to page 102 of 117, please.

10 **A.** Okay.

11 **Q.** This is a call between Mr. Boncy and Mr. Baptiste on
12 12/20/15; is that correct?

13 **A.** Yes.

14 **Q.** 53 seconds there Boncy says, Well, you know, Peter called
15 me last night and he went -- Do you see that?

16 **A.** Yes.

17 **Q.** He continues a line down, No, no. He was, you know, he
18 was very positive when he called.

19 Do you see that?

20 **A.** Yes.

21 **Q.** Let me have you go forward to page 106 of 117.

22 **A.** Okay.

23 **Q.** And right there at line 623 Boncy says, "And that's the,
24 that's the concern. At least I think from the tone of our
25 conversation we spoke for about 30 minutes talking about his

1 family and this and that.

2 Do you see that?

3 **A.** Yes.

4 **Q.** Who is "he" in that sentence to your understanding?

5 **A.** Peter.

6 **Q.** Could you go forward to page 110 of 117.

7 **A.** Of 117? Okay.

8 **Q.** At 1311, the line there that says, Axan is coming up to
9 talk to me about --

10 **A.** Yes.

11 **Q.** Down at 1339, do you see that he says, Because you know
12 that he's already our friend. He's proved that he is already
13 our friend. So we're going to treat it as such.

14 Do you see that?

15 **A.** Yes.

16 **Q.** To your understanding what is that a reference to?

17 **A.** The fact that they had involved him -- included him in
18 the port project, which was to say they had paid him the
19 bribe.

20 **Q.** Okay. Let me have you look at one last page, page 112 of
21 117, please.

22 **A.** Okay.

23 **Q.** At 60 minutes, 54 seconds, do you see that Baptiste says,
24 I talked to Peter, Peter and everybody, that asked me, well,
25 will we support both. And he agreed with me if we have -- it

1 says inaudible, simultaneous speakers -- election, I will
2 support both.

3 And skip down to 1706. He then says, At first, no,
4 no. At first he will say no. Why don't we wait until one
5 become president then we will support. I said no, by that
6 time we going to cost you millions.

7 Do you see that?

8 **A.** Yes.

9 **Q.** And Boncy responds, Yeah, you're absolutely right. Do
10 you see that?

11 **A.** Yes.

12 **Q.** When, if ever, have you heard these two men discuss this
13 topic before?

14 **A.** It came up on November 12 at the Boston Harbor Hotel
15 meeting.

16 **Q.** Generally what was their conversation on November 12 of
17 2015?

18 **A.** That payments to candidates to Haitian government office
19 would be cheaper before someone won an election because then
20 the price would go up.

21 **Q.** Special Agent, what did you do on December 29 of 2015?

22 **A.** I interviewed Baptiste.

23 **Q.** Was that the approach that you had previously planned for
24 December 16?

25 **A.** Yes.

1 Q. Why didn't you approach Mr. Boncy that night?

2 A. The investigative team had selected Baptiste for
3 interview and potential recruitment because he was
4 U.S.-based, and he was also more apparently connected to
5 Haitian government officials and so seemed to be a better
6 recruitment candidate for advancing the investigation.

7 Q. Was Mr. Boncy no longer a target of the investigation at
8 that time?

9 A. He was definitely a target of the investigation at that
10 time.

11 MR. BASIL: If I could have a moment, Your Honor.

12 THE COURT: Sure.

13 MR. BASIL: Nothing further, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. DWYER:

16 Q. Special Agent, you testified about wanting to approach
17 Mr. Baptiste on December 16, 2015, correct?

18 A. Correct.

19 Q. And at that point in time, December 16, 2015, the FBI had
20 given him \$50,000, correct?

21 A. Correct.

22 Q. And he had reported back to the FBI that he had made
23 certain payments in Haiti to public officials, correct?

24 A. Yeah.

25 Q. And you had reviewed those calls, correct?

1 **A.** I had.

2 **Q.** And you believe that he had made those payments to
3 Haitian public officials, correct?

4 **A.** It was an open question at the time.

5 **Q.** But you understood, you believed he had made the
6 payments, correct?

7 **A.** I just said it was --

8 **Q.** You personally, open question with you?

9 **A.** We understood that --

10 **Q.** Not we. You, Special Agent.

11 **A.** Sure. I understood that he had made representations on
12 the phone, and that he had made representations including
13 that he withdrew funds down in Haiti to make payments
14 directly from there.

15 **Q.** You personally believed that he had made payments to
16 Haitian public officials, correct?

17 **A.** I believed certainly that he had made noncash payments to
18 Haitian government officials.

19 **Q.** That's not my question, Special Agent. The FBI -- Let's
20 start from the beginning again. The FBI gave him \$25,000,
21 correct?

22 **A.** Twice.

23 **Q.** Did they give him \$25,000, Special Agent?

24 MR. BASIL: Objection, Your Honor.

25 **A.** We gave him \$50,000. We just said this.

1 THE COURT: I just don't think he heard you.

2 BY MR. DWYER:

3 Q. Did the FBI give Mr. Baptiste \$25,000 in November 2015?

4 A. Yes.

5 Q. Okay. And you gave him \$25,000 premised on the fact that
6 he told you he was going to pay the Prime Minister, correct?

7 A. That was part of the justification for the payment, sure.

8 Q. What was the rest of the justification for giving him
9 \$25,000? Christmas?

10 A. It wasn't Christmas.

11 Q. Okay. What was the rest of the justification? You said
12 it was part of the justification.

13 A. Meaning that he had represented that he intended to make
14 payments to Haitian government officials in Haiti. However,
15 when you take an investigative step directly with subjects,
16 you never know exactly what they're going to do. So part of
17 the investigative process is to observe what happens.

18 Q. Okay. Did you observe what happened?

19 A. With respect to those \$25,000, we received some
20 information from Citibank, yes.

21 Q. What was the information you received from Citibank and
22 when?

23 A. I'm not sure specifically when, but within a week or two
24 weeks of that transfer, we had been told that the first
25 \$25,000 to NOAH had been transferred to other U.S. bank

1 accounts controlled by Baptiste.

2 **Q.** So you knew when -- Let's see. You said the first couple
3 of weeks you knew that the money had been transferred to
4 other bank accounts of Joseph Baptiste?

5 **A.** I don't recall the specific date when we -- when I talked
6 to Citibank.

7 **Q.** Okay. Was it before you gave him the next \$25,000?

8 **A.** I believe that it was. Although I don't recall for sure.

9 **Q.** So you knew that he had not used -- that he had used the
10 money to move to his own personal bank account and gave him
11 another \$25,000?

12 **A.** Yes.

13 **Q.** And the second time he asked for \$25,000, he told you
14 that he was going to use it to pay off Haitian public
15 officials, correct?

16 **A.** True.

17 **Q.** The same explanation he gave the first time, correct?

18 **A.** Generally, yes.

19 **Q.** But you knew he lied the first time, correct?

20 **A.** No, that's not correct.

21 **Q.** He moved that money to his own personal bank account,
22 correct?

23 **A.** True.

24 **Q.** And did he pay Haitian public officials from his own
25 personal bank account?

1 **A.** No. And I didn't say that.

2 **Q.** What happened to the money in his own personal bank
3 account?

4 **A.** My understanding is that he used it for domestic expenses
5 here.

6 **Q.** When did you learn that?

7 **A.** We're talking about the same thing. That's what I just
8 testified to.

9 **Q.** Before you made the second payment?

10 **A.** Yes. Because he had made representations during the
11 course of the same conversations, same time period that he
12 had access to funds directly in Haiti and didn't need to draw
13 money from the United States to make the payments he was
14 describing.

15 **Q.** Okay. So you gave him \$25,000. You knew that he had
16 moved it to personal bank accounts and used it for domestic
17 personal expenses, correct?

18 **A.** That was the information we received from Citibank, yeah.

19 **Q.** That's okay. And then you gave him another \$25,000?

20 **A.** Yeah.

21 **Q.** Okay. And again he told you I'm going to pay Haitian
22 public officials with that money, correct?

23 **A.** Yes.

24 **Q.** Did you tell the prosecutors on the case what was
25 happening with this money?

1 **A.** I don't recall specific conversations.

2 **Q.** Did you have a discussion with your supervisor about what
3 was going on with this money?

4 **A.** I'm sure I did, yeah.

5 **Q.** Okay. And what was the discussion? What was the reason
6 to give this man who had said he used the \$25,000 to pay
7 Haitian public officials another \$25,000?

8 **A.** The same justification that it had been the first time.

9 **Q.** What was that?

10 **A.** That he had represented that he intended to pay Haitian
11 government officials, and that he had access to money
12 directly in Haiti, not necessarily from the NOAH account in
13 the United States.

14 **Q.** Why did you send it to Haiti?

15 **A.** Because the NOAH account in the U.S. was the concealment
16 device or method that had been offered by Baptiste.

17 **Q.** Weren't you concerned that he was scamming you?

18 **A.** No.

19 **Q.** Not at all?

20 **A.** I wouldn't use the word "concern".

21 **Q.** Did you have an investigative Spidey Sense that he might
22 be scamming you?

23 **A.** We committed the funds on the basis I just articulated
24 and observed what happened from there. That's how you
25 investigate.

1 Q. Okay. He never used those funds to pay Haitian public
2 officials, correct?

3 A. My investigative experience is that money is fungible.
4 People treat their total fiscal position as a global sum
5 based on the aggregate of money they have in different pots
6 in different places.

7 Q. Didn't he tell you that he transferred that money to
8 Haiti on one phone call, sir?

9 A. That I don't recall.

10 Q. Okay. So when you arrested him, you were unsure whether
11 he had paid any Haitian public officials with that \$50,000?

12 A. I didn't arrest.

13 Q. I'm sorry. You're right. You didn't. December 16,
14 2015. You were unsure as to whether or not he had used that
15 \$50,000 to pay Haitian public officials?

16 A. I guess that's fair.

17 Q. That's fair. Right? And was that shared generally
18 across the investigative team, people didn't know whether to
19 trust Baptiste?

20 A. That I don't recall.

21 Q. Okay. But you didn't necessarily trust Baptiste,
22 correct?

23 A. I never said that.

24 Q. You were unsure if he paid Haitian public officials.

25 A. No. That's not what I said. You asked the question had

1 he used that \$50,000 to pay Haitian public officials. I said
2 that I did not know.

3 **Q.** He had told you that he used that \$50,000 to pay Haitian
4 government officials. He told the undercover, correct?

5 **A.** Yes.

6 **Q.** But he didn't, correct?

7 **A.** Again it depends on your definition of "that \$50,000".

8 **Q.** Okay. Do you think Baptiste, when he's talking on the
9 wire and with the undercovers, is a man of sterling truth?

10 MR. BASIL: Objection, Your Honor.

11 THE COURT: Basis?

12 MR. BASIL: Could counsel define "sterling truth"?

13 THE COURT: Overruled. You can't elicit testimony
14 about what he understood certain things to be and then resist
15 testimony where they're trying to get his impression of other
16 things.

17 MR. BASIL: Your Honor, we're currently getting
18 testimony about Spidey Senses and sterling truth. I don't
19 believe I used such language.

20 THE COURT: It's not that far off from his
21 understanding of what's going on in conversations that he
22 wasn't present for. You're asking his impressions based on
23 his experience as an agent prior and in the course of this
24 investigation. I'm not sure any of it's all that relevant.
25 But I let you have it, now I'm going to let him have it.

1 **A.** Could you repeat the question, please.

2 BY MR. DWYER:

3 **Q.** Mr. Baptiste, during the course of the wire intercept, he
4 would tell various people different stories, correct?

5 **A.** He didn't always say the exact same thing to everybody.

6 **Q.** He would say what was needed with the audience, correct?

7 **A.** I don't know that I agree with that characterization.

8 **Q.** Did you have concerns that Mr. Baptiste was scamming the
9 FBI?

10 **A.** Again that word concern, I was not concerned.

11 **Q.** It didn't bother you?

12 **A.** No.

13 **Q.** You testified earlier payments to candidates were
14 discussed at various times. Were they political
15 contributions or payments, sir? Is that your
16 characterization, payments?

17 **A.** My understanding based on my work in this investigation
18 was that there were no legitimate political contributions
19 discussed by anybody involved ever.

20 **Q.** Okay. That's your understanding?

21 **A.** Yes.

22 **Q.** Now, I want to go back to the context and the concepts
23 and all those different things and what's going on on
24 December 18, 19. Do you remember all those questions? And
25 we went through Exhibit 1A, very long, right in front of you

1 there?

2 **A.** Yes.

3 **Q.** Okay. Does there come a time in an investigation where
4 you say, you know what, we've got enough evidence, I don't
5 need to save it anymore?

6 **A.** No.

7 **Q.** No. Your job is to preserve evidence, correct?

8 **A.** Collect and preserve, sure.

9 **Q.** As long as the investigation goes on, correct?

10 **A.** And thereafter.

11 **Q.** And thereafter. And in this case the investigation was
12 going on, correct?

13 **A.** What time are we talking about?

14 **Q.** December 19 --

15 **A.** Yes. The investigation at that time was ongoing.

16 **Q.** And you certainly didn't make any estimation at any time
17 during this case to say we've got enough, we don't need to
18 save this evidence, correct?

19 **A.** No.

20 **Q.** And if you had evidence that was exculpatory, you would
21 feel obligated to preserve it?

22 **A.** I feel obligated to preserve evidence regardless of its
23 perceived exculpatory quality.

24 **Q.** But you didn't take the steps to preserve those
25 December 19, 2015, telephone calls in this case, did you?

1 **A.** I disagree. My understanding at the time was that they
2 were preserved indefinitely on the original device of
3 collection at a headquarters facility. My understanding of
4 the -- yeah. That's the answer.

5 **Q.** It was at the headquarters facility, right?

6 **A.** Yeah.

7 **Q.** Okay. Good. The emails to Chambers about the consensual
8 wire, you testified about that on cross examination.

9 **A.** Mm-hmm.

10 **Q.** How did you become aware of those?

11 **A.** He forwarded one to me.

12 **Q.** When?

13 **A.** I believe in January 2016.

14 **Q.** January of 2016?

15 **A.** I think that's right.

16 **Q.** What was the date of that?

17 **A.** I don't recall.

18 **Q.** I'm sorry. January 2016 you received the email from
19 Vincent Chambers?

20 **A.** Yeah. I think that's right.

21 **Q.** Do you still have it?

22 **A.** Yeah, sure.

23 **Q.** You do?

24 **A.** I believe I do.

25 **Q.** That was January 2016, at most 45 days from the lost

1 telephone calls, correct?

2 **A.** I'll adopt your math. Sure.

3 **Q.** You were on notice that there were calls that needed to
4 be downloaded, correct?

5 **A.** That's not the content of the email.

6 **Q.** What was the content of the email then?

7 **A.** It's an automated message that reminds the authorized
8 user or the authorized controller of the account that the
9 account exists. And if it's no longer in use, then contact
10 the relevant personnel to deactivate.

11 **Q.** And when you received that email, what did you do?

12 **A.** I don't recall specifically.

13 **Q.** Did you respond?

14 **A.** I don't recall.

15 **Q.** Did you take action to see what was still up there on the
16 server?

17 **A.** No. I didn't understand that as a necessary step, and
18 the investigation was ongoing.

19 **Q.** In Norfolk you had done this. You had downloaded on this
20 same system in Norfolk?

21 **A.** Yes. The collection event was similar to a wire is when
22 the period of collections is over, you collect everything on
23 one disk and then pass it to ELSUR for local preservation.

24 **Q.** In June of 2016 you became the user of this system, is
25 that right, the authorized user?

1 **A.** In June 2016, yes, that's my understanding.

2 **Q.** How did you become the authorized user?

3 **A.** I don't recall the specific steps that I took.

4 **Q.** What did you do when you became the authorized user?

5 **A.** I believe that I logged in to check whether a call made
6 to me by Peter as a test of the system had been captured.

7 **Q.** Okay.

8 **A.** Like a system check.

9 **Q.** But you have to download it to do that, right?

10 **A.** No.

11 **Q.** No?

12 **A.** No.

13 **Q.** What do you do?

14 **A.** I believe at the time the way the system was configured,
15 you could just log in and look at the most recent line, the
16 record, which would have been identifiable as my telephone
17 number on -- within -- I forget which day I did it. But
18 whatever day I logged in.

19 **Q.** So you just saw if the call was there. You didn't
20 actually listen to the call?

21 **A.** Peter and I didn't have a conversation on the system, or
22 at least not one of any length or anything worth reviewing.

23 **Q.** But you said you logged in to see if a call that Peter
24 had made to you was on the system, right?

25 **A.** Yeah. Correct.

1 **Q.** And did you listen to the call?

2 **A.** I don't recall.

3 **Q.** So we're clear, Special Agent, you were the case agent
4 from December 2015 to the time that this case was indicted,
5 correct?

6 **A.** At some point in December. Not the entirety of December
7 2015. But the rest is true.

8 **Q.** Okay. And you never once listened to these calls?

9 **A.** No.

10 MR. DWYER: Nothing further, Your Honor.

11 MR. BASIL: Nothing, Your Honor.

12 THE COURT: You're good.

13 THE WITNESS: Thank you, Your Honor.

14 MR. DWYER: Nothing further from us, Your Honor, on
15 the motion.

16 THE COURT: Does the government want to call its
17 own witnesses?

18 MR. BASIL: I missed it.

19 THE COURT: Do you want to call any of your own
20 witnesses?

21 MR. BASIL: No, Your Honor.

22 THE COURT: So I don't think this needs to be
23 resolved. I'm not going to dismiss the case on this, which
24 should not come as a surprise to you. So I'm thinking that
25 we don't need to resolve this by opening statements, correct?

1 We're talking about what kind of instruction?

2 MR. DWYER: Understood. If it's an instruction
3 issue, no, Your Honor. There's various remedies in between,
4 however, including suppression of other types of evidence and
5 so forth, which I think the First Circuit case law makes
6 clear that you don't have to dismiss, but you can penalize
7 here because frankly this is a mess. Right?

8 THE COURT: I agree that what happened was not
9 exemplary. It also does not seem to have been intentional on
10 the part of anybody.

11 MR. DWYER: I think there's probably some
12 credibility there. I'm not going to say -- I will reserve my
13 arguments on bad faith. Let's put it that way. But I do
14 think that this call was exculpatory, and it's completely
15 different from what Baptiste, the alleged co-conspirator, is
16 getting at.

17 And to say somehow that there should be no remedy
18 here but for an instruction, which I'm sure the government is
19 going to argue we have to prove bad faith on, is just
20 inconsistent.

21 THE COURT: I'm going to give you some kind of
22 instruction on it. I'm open to hearing what other sorts of
23 remedies you think are appropriate. I don't know whether
24 this call was exculpatory or it wasn't. But I think that
25 your ability to now argue that it was is pretty valuable in

1 the context of things.

2 MR. DWYER: I agree.

3 THE COURT: You may be better off without the call
4 than you would be with it. We don't know. Right?

5 MR. DWYER: We don't know.

6 THE COURT: We don't know.

7 MR. DWYER: We don't know, Your Honor. And that's
8 a problem.

9 THE COURT: But you are free to argue that. And I
10 will give you some kind of instruction missing evidence or
11 spoliation. I don't know how strong an instruction because
12 I'm not willing to find that they did it intentionally. So
13 we'll see what the range of possible instructions are.

14 MR. DWYER: Understood.

15 THE COURT: No question that it's sloppy.

16 MR. DWYER: It's sloppy. So is the 25. And 25
17 sloppy when they don't even know what he's using it for. The
18 whole thing is sloppy.

19 THE COURT: I would just like someone to give me
20 \$25,000 and not be concerned about it. I'm good with that.
21 But you have that, too. In terms of suppression, I don't see
22 anything that sort of -- I'm having trouble with the fruit of
23 carelessness.

24 MR. DWYER: I think the wiretap, Your Honor.

25 THE COURT: No. I'm not suppressing the wiretap on

1 this. But you also have your arguments about the wiretaps
2 and the consensual logs not matching up. I don't know what I
3 would do on a carelessness thing. But even assuming that it
4 was something more than careless, I don't see that there's a
5 particular fruit of the fact that this tape was missing or
6 the suppression would be closely aligned to the -- for lack
7 of a better word I'm going to call it misconduct, although I
8 don't know that it was misconduct. But I don't see anything
9 that they got that was closely aligned to the thing that they
10 lost.

11 MR. DWYER: I understand. The problem is we're
12 stuck with a bunch of calls where they're talking with --
13 this is a classic game of telephone. The government decided
14 not to talk to my client and instead have a third party speak
15 for him. And then they talked to him three times, and two of
16 those three are gone. And on those two of the three he says
17 something entirely different than what they're banging
18 Mr. Baptiste about.

19 THE COURT: That's like a gold mine for you.

20 MR. DWYER: I know, Judge, but no man should have
21 to sit through that gold mine. He has a due process right
22 that these agents save the evidence, particularly when it's
23 apparently exculpatory.

24 THE COURT: I don't know that it was exculpatory.
25 And I don't know that it's a due process right. I'd have to

1 think about that. It should not have happened. Right? I'll
2 give you that easily. And I'm willing to entertain remedies,
3 but I'm not going to dismiss the case on this.

4 It wasn't intentional misconduct. And suppressing
5 the wiretap seems like really killing the dog over the --
6 killing the horse over the nail in its foot, right?

7 So if you want to come up with some other ideas on
8 that, I'm open to it. But it's hard for me to think what
9 those might be under these circumstances. Look, I'm not
10 condoning what happened here. I don't think that there's
11 anyone from the government that's sitting in this room that's
12 going to condone it either.

13 MR. DWYER: Well, there was one on the stand, Your
14 Honor, who won't admit that --

15 THE COURT: He's trying to be careful. He's
16 probably going to be on the stand again next week, right?

17 MR. DWYER: Yeah. I understand, Your Honor. We'll
18 think up some ideas. Of course run them by the government.
19 There are a couple of other housekeeping things.

20 THE COURT: I have a list, too. Do you want to do
21 your list or my list?

22 MR. DWYER: Your list, Your Honor.

23 THE COURT: The civil case that I have been
24 enjoying all week long is not over. Judge Young is going to
25 impanel the jury on Monday. The civil case should be to the

1 jury by 11. We have the charge and the two closings. That's
2 all that's left. Hopefully he'll pick a jury, and then we'll
3 give them a little bit of a break, and then we'll be ready
4 for openings in this case.

5 I am not -- I think just in terms of the orderly
6 progression of evidence, and given that I've given you two
7 weeks for a case that I don't think really sounds like it's
8 going to push the envelope on that, I don't think we'll
9 bother trying to put on testimony on Monday. Just pick a
10 jury and do openings. Does that make sense to everybody?

11 MR. BASIL: Yes, Your Honor.

12 MR. DWYER: Yes, Your Honor.

13 THE COURT: I have copies for you of the voir dire
14 if I can figure out which pile I put it in. The voir dire, I
15 have a clean copy; I have a red lined copy. The copies of
16 what I would normally say to the jury when they came up, I'll
17 give it to you. I'm sure Judge Young has his own spiel.
18 I'll hand him mine. Maybe he'll use it and maybe he won't.
19 And I will give you a copy of the preliminary instructions,
20 which will be the first thing that I do after there's a jury
21 selected and just before openings. So I have copies of all
22 of that for you.

23 And that's it except have we come to a resolution
24 on the undercover identity and how we're going to deal with
25 that at trial?

1 MS. RUBIN-SMITH: Your Honor, our proposal is that
2 the undercover testify as Peter Anderson, and we make it
3 clear that that is not his real name.

4 THE COURT: I'm not doing that. I think I've said
5 that every single time we've been in court that that's not
6 what's going to happen. It's not fair to them. Come up with
7 some other way. If you want to call him Agent Peter and
8 Undercover Peter, but it's going to be crystal clear. We've
9 been over this. You can't make it look to this jury like he
10 was using the same name in court and the same name in the
11 investigation. There is an aspect of deceit to it that they
12 want to exploit.

13 It is perfectly permissible to see -- I'm not
14 impugning the government's conduct at all. This was the path
15 you chose with an undercover, and now that's what you're
16 going to live with in front of the jury.

17 MS. RUBIN-SMITH: We propose to call him Agent
18 Peter as we did today.

19 THE COURT: Agent Peter is fine with me.

20 MR. DWYER: I don't have a problem with that, Your
21 Honor.

22 THE COURT: Okay. Agent Peter. I know we've had
23 this discussion about Agent Peter four times. I hope we just
24 put it to bed. Okay?

25 Let's start with you and then we'll move over to

1 the government. If Mr. LaRoche's issues are different than
2 yours, we can --

3 MR. DWYER: Your Honor, today I objected a couple
4 times. I will have a standing objection if anyone who is not
5 participating in a telephone call attempts to interpret it.

6 THE COURT: My view on that is, and I will hear the
7 government on it, is that if there are particular code words
8 that the case agent has come to be familiar with during the
9 course of the investigation, like calling a kilogram of
10 cocaine an elephant, or whatever we're calling it these days,
11 I will allow that. Something that requires some special
12 expertise.

13 If there's somebody in the room participating, he
14 can give his understanding to explain why he says what he
15 says next.

16 MR. DWYER: I don't have any objection to that, but
17 what we heard today is an agent who's all over the place.

18 THE COURT: I agree. But it's just me. It's just
19 me.

20 MR. DWYER: I understand. I wanted to make that
21 clear that I didn't object today, but I will have a standing
22 objection at trial. The other is, Your Honor, I know we're
23 going to start on Tuesday. There is a significant amount of
24 recordings that we have to prepare for purposes of cross. I
25 would request names of the first witnesses that will be on

1 that first day to be provided to us tomorrow.

2 THE COURT: I thought we'd agreed that you'd give
3 him the list of witnesses a few days in advance.

4 MR. BASIL: Sure. Ornello Arlati is the first
5 witness.

6 MR. LAROCHE: Who?

7 MR. DWYER: Ornello Arlati.

8 THE COURT: Of course when it's your turn to put on
9 a case, to the extent they're giving you exhibits and witness
10 names in advance, you'll extend them the same courtesy.

11 MR. DWYER: Understood. Which brings me to the
12 third point. We may have additions to witness list. We will
13 get them to chambers over the weekend. Is that permissible?

14 THE COURT: Yes. But don't forget I am now not
15 doing the voir dire myself. I will get in super early on
16 Monday because I have to get this other thing finished off.
17 I'll make the additions and hand it to Judge Young.

18 MR. DWYER: Okay. And then the final thing for me,
19 Your Honor, is I know today we had some back and forth on
20 transcripts which are really just marked for identification,
21 the English language transcripts. And we do intend to offer
22 some of our own, and we would likely want to use them on
23 cross in the government's case.

24 In this case the government is not producing
25 transcripts of the entire meeting. For example, there's a

1 three-hour meeting, and they're just giving clips. So we
2 need to somehow work out how to use our transcript beforehand
3 so that we don't run into a kerfuffle in front of the jury.

4 So I would propose we can provide our transcripts
5 to the government tonight. And if we've got an issue, we
6 resolve it over the weekend. But otherwise that we be
7 permitted to use them on cross.

8 THE COURT: They're going to be permitted to use
9 their transcripts on cross. Either I can give the jury an
10 instruction -- because ultimately you're going to have to put
11 on some sort of verification of your transcript. It's hard
12 to do when they're putting on their case. Either you resolve
13 it or I give the jurors an instruction, an instruction to the
14 extent that everybody's prepared their own drafts, and I
15 anticipate everyone will put on someone to explain how they
16 got their drafts, and the jury will credit that however they
17 will.

18 MR. BASIL: Your Honor, are we discussing foreign
19 language transcripts or English?

20 MR. DWYER: English.

21 MR. BASIL: Your Honor, I believe the case law on
22 English language transcripts is the audio is the evidence.
23 He can certainly refer to a chalk with the witness and say
24 doesn't it say this. The witness may say that's not what I
25 heard.

1 THE COURT: I thought you were talking about the
2 translation transcripts.

3 MR. DWYER: It's not the translations. I
4 apologize. We're working the translations out. We may have
5 some additional. I'm talking about like today the chalks,
6 the English language ones, which we tried to use today and
7 there was an objection.

8 THE COURT: I'm sorry. I thought these were the
9 translated transcripts. You can put a transcript in front of
10 them, and you can play the tape.

11 MR. DWYER: We can provide it and publish it to the
12 jury at the same time?

13 THE COURT: Yeah. They'll hear what they'll hear.
14 They're going to see your transcripts, and they'll see your
15 transcripts. As long as they're hearing it.

16 MR. DWYER: Understood.

17 THE COURT: I thought we were talking about the
18 foreign language transcripts.

19 MR. BASIL: No, Your Honor. Now, with respect to
20 the foreign language transcripts, to the extent there are
21 small pieces of English in them, our solution to that, as we
22 previously discussed with the Court, the government will
23 offer the entirety of the tape. So that will actually be in
24 evidence. And then we will use the foreign language
25 transcript to present that to the jury without playing long

1 sections of --

2 THE COURT: I thought you were going to indicate in
3 some way in the transcript what words were in English.

4 MR. BASIL: Yes, Your Honor.

5 THE COURT: That's fine.

6 MR. BASIL: The non-italicized part is the foreign
7 language, and the italicized is the English.

8 THE COURT: This is another issue I thought we'd
9 pretty much beaten to death over the last few weeks.

10 MR. BASIL: Yes. To the extent it came up today,
11 there's a different treatment of the English language in each
12 case. I think both parties are going to be using in the
13 foreign language transcripts relying on the fact that if
14 there's a dispute about what is said in the English language
15 portion, the jury is going to have to listen to the tape to
16 figure it out.

17 THE COURT: They can listen to the tape, but they
18 can do it with each of your suggestions of what the tape
19 says.

20 MR. BASIL: Thank you.

21 MR. DWYER: We don't have an objection to that
22 process, Your Honor. I think we said that the last time.

23 THE COURT: I'm pretty sure that horse is dead.
24 Anything else from the government?

25 MS. RUBIN-SMITH: Yes, Your Honor. With reference

1 to the witness who is authenticating the phone extraction, we
2 propose that the witness authenticate the disk of the entire
3 extraction, but that we only use a couple of excerpts that
4 are actually relevant to the case to use as exhibits to the
5 jury so they don't receive a whole disk of irrelevant
6 information.

7 THE COURT: Perfectly fine.

8 MS. RUBIN-SMITH: Okay. Then second with the
9 Creole transcripts, we received proposed edits from
10 Mr. Boncy's counsel but not from Baptiste's counsel. So we
11 just wanted to confirm that there will be no proposed edits
12 coming this weekend because we are working to finalize the
13 transcripts.

14 THE COURT: He's next. I've gone to him, him.
15 First of all, Mr. LaRoche, before we get to that, what's your
16 position on what she just raised? Do you have any
17 corrections to the transcripts.

18 MR. LAROCHE: No, Your Honor.

19 THE COURT: Do you have anything else you want to
20 raise, Mr. LaRoche?

21 MR. LAROCHE: No, Your Honor.

22 THE COURT: Is your client going to be here?

23 MR. LAROCHE: He will. He's coming in on Sunday,
24 Your Honor.

25 THE COURT: Okay.

1 MS. RUBIN-SMITH: Your Honor, just one more thing.
2 We did send two lists of proposed stipulations; one list of
3 authenticity stipulations and the other factual. We've only
4 heard back that Boncy and Baptiste will stipulate that
5 they're U.S. citizens and nothing else. I just wanted to
6 confirm that there are no further stipulations.

7 MR. DWYER: I think that's correct, Your Honor.

8 MR. LAROCHE: I agree.

9 THE COURT: Maybe they'll soften up on that as we
10 go along.

11 MR. DWYER: Could be.

12 THE COURT: I have these for you guys. How many
13 copies do you guys want?

14 MR. BASIL: Two.

15 THE COURT: Do you guys want more than two,
16 Mr. Dwyer, Mr. LaRoche?

17 MR. DWYER: No, Your Honor.

18 THE COURT: Come on up.

19 MR. LAROCHE: Your Honor, there's one. We just
20 have the one name. We're going to add that.

21 THE COURT: You can either give it to Erika or you
22 can email it to us.

23 MR. LAROCHE: Okay.

24 THE COURT: Is that it?

25 MR. DWYER: That's it. Thank you, Your Honor.

1 THE COURT: Listen, it is my intention to sit 10 to
2 4. There's at least one day when I can't do it, which is
3 Thursday the 13th. I'm not going to be able to start until
4 about 11. Other than that, I think I am good for 10 to 4.
5 Okay?

6 MR. DWYER: Thank you, Your Honor.

7 THE COURT: Case is recessed.

8 (Court recessed at 6:02 p.m.)
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/s/ Joan M. Daly

July 10, 2019

Date